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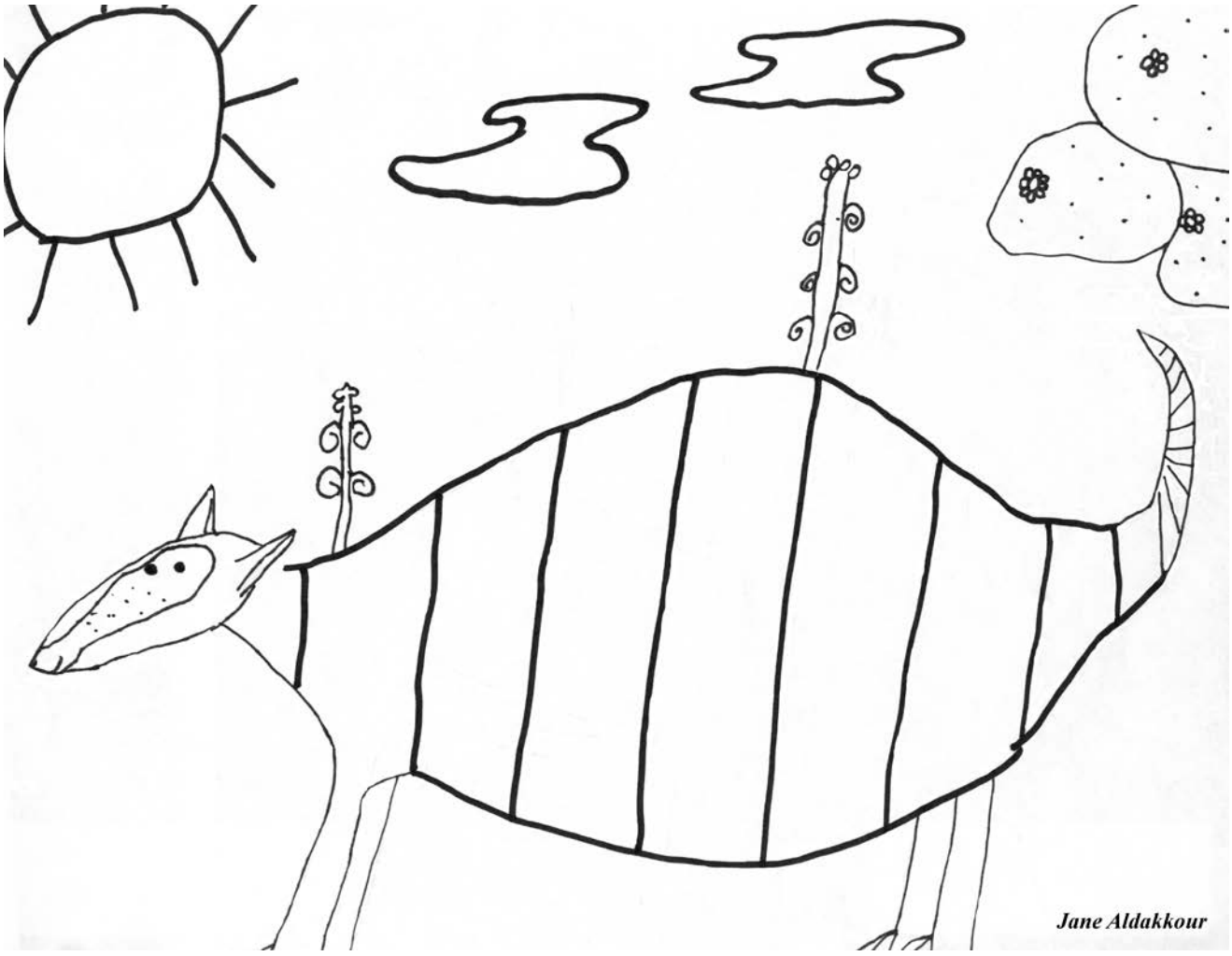

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/open/index.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.texas.gov

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Requests for Opinions

RQ-1105-GA

Requestor:

The Honorable Bill Moore

Johnson County Attorney

204 South Buffalo Avenue, Suite 410

Cleburne, Texas 76033

Re: Whether a county is a "covered entity" under Health and Safety Code section 181.001(b)(2) and is thereby subject to the Health Insurance Portability and Accountability Act (RQ-1105-GA)

Briefs requested by February 26, 2013

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201300327
Katherine Cary
General Counsel
Office of the Attorney General
Filed: January 29, 2013

♦ ♦ ♦

Opinions

Opinion No. GA-0983

The Honorable John J. Carona

Chair, Committee on Business and Commerce

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether the Medicaid reimbursement methodology imposed by rule 354.1143 of the Health and Human Services Commission impermissibly conflicts with section 32.050(c) of the Human Resources Code (RQ-1075-GA)

S U M M A R Y

To the extent that section 354.1143(b) of the Health and Human Services Commission's rules limits the Health and Human Services Commission's obligation to pay Medicare deductibles and coinsurance for an ambulance service provided to a person eligible for both Medicare and Medicaid benefits, the rule conflicts with section 32.050(c) of the Texas Human Resources Code.

Opinion No. GA-0984

The Honorable William A. Callegari, P.E.

Chair, Committee on Government Efficiency and Reform

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a junior college district is considered to be a "school district" for purposes of section 395.022, Local Government Code, which relates to the payment of impact fees to a political subdivision (RQ-1076-GA)

S U M M A R Y

A court would likely conclude that the term "school district" as used in subsection 395.022(b) of the Local Government Code includes junior college districts.

Opinion No. GA-0985

The Honorable Joseph C. Pickett

Chair, House Committee on Defense and Veterans' Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768

Re: Whether a home-rule city may change the terms of its officers from three to four years without first adopting a charter amendment (RQ-1077-GA)

S U M M A R Y

Under article XI, section 11(a) of the Texas Constitution, a court would likely conclude that a home-rule municipality may not change its city council terms from three years to four years without a charter amendment.

To the extent the City of Socorro's city council terms exceed four years, they are contrary to article XI, section 11(a) of the Texas Constitution.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201300356

Katherine Cary
General Counsel
Office of the Attorney General
Filed: January 30, 2013

♦ ♦ ♦

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. **[~~Square brackets and strikethrough~~]** indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

The Health and Human Services Commission (HHSC) proposes to amend §354.1070, concerning Definitions, and §354.1072, concerning Authorized Inpatient Hospital Services. Additionally, HHSC proposes to add new Division 35, Reimbursement Adjustments for Potentially Preventable Events, to include new §354.1445, concerning Potentially Preventable Readmissions, and §354.1446, concerning Potentially Preventable Complications.

Background and Justification

Senate Bill (S.B.) 7, 82nd Legislature, First Called Session, 2011 requires HHSC to identify potentially preventable readmissions (PPR) and potentially preventable complications (PPC) in the Medicaid population and confidentially report the results to each hospital annually. The hospital is required to distribute the information to its health care providers. Additionally, the bill requires HHSC to implement quality-based payments to hospitals based on the results of the PPR and PPC analysis. HHSC proposes new Division 35 to define the methodology for applying the PPR and PPC rate adjustments. HHSC also proposes to substitute the broader term "potentially preventable events" throughout the rules to identify all of the preventable events for which payment reductions will eventually apply.

The 2012-13 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session, 2011 (Article II, Health and Human Services Commission, Rider 61(b)(23)), authorizes HHSC to implement the Medicare billing prohibition as a Medicaid cost containment measure. The Medicare billing prohibition refers to Medicare's policy for payment of outpatient hospital services provided in hospital outpatient departments on either the day of or during the three days prior to an inpatient admission.

Under this policy, a hospital (or an entity wholly owned or operated by the hospital) includes, in its charges for the inpatient hospital stay, charges for all diagnostic services and non-diagnostic services "related to the admission" that are provided during the three-day payment window. Hospitals that are not "subsection (d)" hospitals (those described in Social Security Act §1886(d), *e.g.,* children's hospitals and psychiatric hospitals) are subject to a one-day payment window instead of the three-day payment window.

The rule changes implementing the Medicare billing prohibition policy that went into effect September 1, 2012 contained an error. After further review of the federal law, HHSC proposes to delete "unless provided on the date of the patient's admission" from the rule.

Section-by-Section Summary

Proposed amended §354.1070(3) adds a definition of potentially preventable events to include the various types of potentially preventable events.

Proposed amended §354.1072(a)(3) clarifies that reimbursement denials or reductions can be imposed on the various types of potentially preventable events in addition to preventable adverse events. Proposed amended §354.1072(a)(3) also removes the exception for certain hospitals because the statutory direction to implement quality-based payments does not exclude any category of hospital.

Proposed amended §354.1072(a)(4) replaces the term potentially preventable readmissions with the broader term potentially preventable events to identify all of the preventable events for which payment reductions will eventually apply.

Proposed amended §354.1072(b)(1)(B) aligns state law with federal law which does not exclude ambulance or maintenance renal dialysis services as non-diagnostic services.

Proposed new §354.1445 provides the methodology for applying the potentially preventable readmission reimbursement adjustment.

Proposed new §354.1446 provides the methodology for applying the potentially preventable complications reimbursement adjustment.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, during the first five-year period the proposed amendments and new sections are in effect, there are foreseeable implications relating to costs or revenues of state government. The effect on state government for the first five years the proposed rules are in effect is an estimated reduction in cost of ($1,583,935) all funds (AF) (($646,087) general revenue (GR)) in fiscal year (FY) 2013; ($19,941,882) AF (($8,228,021) GR) in FY 2014; ($24,062,769) AF (($9,940,330) GR) in FY 2015; ($25,023,904) AF (($10,337,375) GR) in FY 2016; and ($26,023,429) AF (($10,750,278) GR) in FY 2017. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

According to data collected by the Texas Department of State Health Services, only two for-profit hospitals registered as Medicaid providers have annual gross receipts of less than $6 million per year (i.e., are small or micro businesses). If one or both of these hospitals exceeds the PPR or PPC rates specified in the proposed rules, their Medicaid-claim payments will be reduced, which may have an adverse economic impact on the hospital.

HHSC cannot project the economic impact of the proposed rules on these small or micro businesses because it is unknown at this time whether they will be subject to a payment reduction at any time after the rules are effective; and the number and value of future claims subject to any reduction cannot be determined.

There are no additional administrative costs anticipated for persons required to comply with this rule proposal. Those hospitals that exceed the specified actual-to-expected ratios of potentially preventable events (according to the ratio calculated by Texas Medicaid) will be required to change medical procedures or practices or face downward quality-based reimbursement adjustments. There is no anticipated negative impact on local employment.

Public Benefit

Chris Traylor, Chief Deputy Commissioner, has determined that, for each year of the first five years the proposed amendment is in effect, the public will benefit from its adoption. The anticipated public benefit of enforcing the proposed amendment is a cost savings of approximately $40,634,392 over the first five years and is in compliance with legislative direction.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Pat Boone, Senior Program Specialist, Medicaid/CHIP Division, Health and Human Services Commission, Mail Code H-390, 4900 N. Lamar Boulevard, P.O. Box 13247, Austin, Texas 78711; by fax to (512) 249-3707; or by email to pat.boone@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for March 6, 2013 from 10:00 a.m. to 11:00 a.m. (central time) in the Health and Human Services Braker Center, Lone Star Conference Room, located at 11209 Metric Boulevard, Building H, Austin, Texas. Persons requiring further information, special assistance or accommodations should contact Leigh A. Van Kirk at (512) 491-2813.

DIVISION 6. HOSPITAL SERVICES

1 TAC §354.1070, §354.1072

Statutory Authority

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The amendments affect Texas Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1070. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Present on Admission--Present at the time the order for inpatient admission occurs. Conditions that develop during an outpatient encounter, including emergency department, observation, or outpatient surgery, are considered present on admission.

(2) Preventable Adverse Event--A serious, clearly identifiable and measurable error in medical care that is of concern to both the public and health care professionals and providers. The Health and Human Services Commission (HHSC) will determine Medicaid preventable adverse events, which may include the following:

(A) a health care-associated adverse condition or event for which the Medicare program will not provide additional payment under a policy adopted by the federal Centers for Medicare and Medicaid Services, which may be referred to as a hospital acquired condition, hospital acquired infection, never event, or National Coverage Determination (NCD).

(B) any other preventable adverse event that causes patient death or serious disability in a health care setting, including an event on the list of adverse events identified by the National Quality Forum.

(3) Potentially Preventable Event--One of, or any combination of, the following events:

(A) Potentially Preventable Admission--An admission of a person to a hospital or long-term care facility that may reasonably have been prevented with adequate access to ambulatory care or health care coordination.

(B) Potentially Preventable Ancillary Service--A health care service provided or ordered by a physician or other health care provider to supplement or support the evaluation or treatment of a patient, including a diagnostic test, laboratory test, therapy service, or radiology service, that may not reasonably be necessary for the provision of quality health care or treatment.

(C) Potentially Preventable Complication--A harmful event or negative outcome with respect to a person, including an infection or surgical complication, that:

(i) occurs after the person's admission to a hospital or long-term care facility; and

(ii) may have resulted from the care, lack of care, or treatment provided during the hospital or long-term care facility stay rather than from a natural progression of an underlying disease.

(D) Potentially Preventable Emergency Room Visit--Treatment of a person in a hospital emergency room or free-standing emergency medical care facility for a condition that could be, or could have been, treated or prevented by a physician or other health care provider in a nonemergency setting.

(E) Potentially Preventable Readmission--A return hospitalization of a person within a period specified by HHSC that results from deficiencies in the care or treatment provided to the person during a previous hospital stay or from deficiencies in post-hospital discharge follow-up. The term does not include a hospital readmission necessitated by the occurrence of unrelated events after the discharge. The term includes the readmission of a person to a hospital for:

(i) the same condition or procedure for which the person was previously admitted;

(ii) an infection or other complication resulting from care previously provided;

(iii) a condition or procedure that indicates that a surgical intervention performed during a previous admission was unsuccessful in achieving the anticipated outcome; or

(iv) another condition or procedure of a similar nature, as determined by HHSC.

~~[(3) Potentially Preventable Readmission--A return hospitalization of a person within a period specified by HHSC that results from deficiencies in the care or treatment provided to the person during a previous hospital stay or from deficiencies in post-hospital discharge follow-up. The term does not include a hospital readmission necessitated by the occurrence of unrelated events after the discharge. The term includes the readmission of a person to a hospital for:~~

~~[(A) the same condition or procedure for which the person was previously admitted;]~~

~~[(B) an infection or other complication resulting from care previously provided;]~~

~~[(C) a condition or procedure that indicates that a surgical intervention performed during a previous admission was unsuccessful in achieving the anticipated outcome; or]~~

~~[(D) another condition or procedure of a similar nature, as determined by HHSC.]~~

§354.1072. Authorized Inpatient Hospital Services.

(a) Inpatient hospital services. Inpatient hospital services include those items and services that are ordinarily furnished by the hospital for the care and treatment of inpatients and are provided under the direction of a physician in a Title XIX hospital or a Title XVIII or XIX out-of-state hospital approved for participation. Except as otherwise specified, and subject to the qualifications, limitations, and exclusions set forth, benefits are provided for hospital services set forth as follows when provided to eligible recipients.

(1) Duration of care. Except as otherwise specified in §354.1175 of this subchapter (relating to Organ Transplants), when an eligible recipient is confined as an inpatient in a Title XIX hospital, or a Title XVIII or XIX out-of-state hospital approved for participation, the Health and Human Services Commission (HHSC) or its designee pays for medically necessary inpatient hospital services actually furnished to the recipient during the first 30 days of each Title XIX spell of illness. The Title XIX spell-of-illness limitations are waived for medically necessary inpatient services provided to recipients less than age twenty one. The services are subject to the utilization review requirements of the Texas Medical Assistance (Medicaid) Program.

(2) Benefits for inpatient hospital care. The hospital services for which benefits are provided under paragraph (1) of this subsection consist of the following:

(A) bed and board in semiprivate accommodations or in an intensive or coronary care unit, including meals, special diets, and general nursing services; or an allowance for bed and board in private accommodations, including meals, special diets, and general nursing service, to the extent of the hospital's charge for its most prevalent semiprivate accommodations, except that bed and board in private accommodations are provided in full if required for medical reasons;

(B) all other care in the nature of usual hospital services; and

(C) maternity care, including the usual and customary care for female recipients.

(3) HHSC will impose reimbursement denials or reductions for potentially preventable events and preventable adverse events as defined in §354.1070 of this division (relating to Definitions)[~~, except for those hospitals specified in 42 Code of Federal Regulations §412.22 (relating to Excluded hospitals and hospital units: General rules)~~].

(4) HHSC will categorize patients based on severity of illness, risk of mortality and other criteria defined by HHSC or its designee to identify potentially preventable events as defined in §354.1070 of this division and apply corresponding reimbursement adjustments as described in Division 35 of this subchapter (relating to Reimbursement Adjustments for Potentially Preventable Events) [~~readmissions~~].

(b) Charges for hospital services provided before admission.

(1) Except as provided in paragraph (2) of this subsection, a hospital or any entity that is wholly owned or wholly operated by a hospital must include in its inpatient charges the cost of all reimbursable services provided by the hospital to a patient on the date of admission and during the three calendar days immediately preceding the date of the patient's admission, if the services are:

(A) diagnostic services, including clinical diagnostic lab tests; or

(B) non-diagnostic services related to the inpatient stay, except ambulance and maintenance renal dialysis services [~~unless provided on the date of the patient's admission~~].

(2) A hospital that is not a "subsection (d) hospital" as defined in Social Security Act §1886(d)(1)(B) (42 U.S.C. 1396ww(d)(1)(B)) must include in its charges the cost of services described in paragraph (1) of this subsection provided by the hospital to a patient during the one calendar day immediately preceding the date of admission. Hospitals that are not "subsection (d) hospitals" include children's, psychiatric, and rehabilitation hospitals.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300281

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 424-6900

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DIVISION 35. REIMBURSEMENT ADJUSTMENTS FOR POTENTIALLY PREVENTABLE EVENTS

1 TAC §354.1445, §354.1446

Statutory Authority

The new rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The new rules affect Texas Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1445. Potentially Preventable Readmissions.

(a) Introduction. The Health and Human Services Commission (HHSC) may reward or penalize a hospital under this section based on the hospital's performance with respect to exceeding or failing to meet outcome and process measures relative to all Texas Medicaid hospitals regarding the rates of potentially preventable events.

(b) Definitions.

(1) Actual-to-Expected Ratio--The ratio of the actual number of potentially preventable readmission (PPR) chains compared to the expected number of PPR chains, where the expected number depends on the diagnosis code, the severity of illness, the patient age, and the presence or absence of a major mental health or substance abuse comorbidity.

(2) Case-mix--A measure of the clinical characteristics of patients treated during the reporting time period and measured using diagnosis-code relative weights, patient age, and the presence of a major mental health or substance abuse comorbidity.

(3) Claims during the reporting time period--Includes Medicaid traditional fee-for-service (FFS) and managed care inpatient hospital claims filed for reimbursement by a hospital that:

(A) had a date of admission occurring within the reporting period;

(B) were adjudicated and approved for payment during the reporting period and the six-month grace period that immediately followed, except for claims that had zero inpatient days;

(C) were not claims for patients who are covered by Medicare; and

(D) were not Medicaid spend-down claims.

(4) Clinically related--A requirement that the underlying reason for readmission be plausibly related to the care rendered during or immediately following the initial admission. A clinically related readmission occurs within a specified readmission time interval resulting from the process of care and treatment during the initial admission or from a lack of post admission follow-up, but not from unrelated events occurring after the initial admission.

(5) HHSC--The Health and Human Services Commission or its designee.

(6) Hospital--A public or private institution licensed under Chapter 241 or Chapter 577, Health and Safety Code, including a general or special hospital as defined by §241.003, Health and Safety Code.

(7) Initial admission--In this section only, either an admission followed by one or more PPRs or an admission that was not followed by a PPR.

(8) Medicaid program--The medical assistance program established under Chapter 32, Human Resources Code.

(9) Potentially preventable event (PPE)--A potentially preventable admission, a potentially preventable ancillary service, a potentially preventable complication, a potentially preventable emergency room visit, a potentially preventable readmission, or a combination of these events, which are more fully defined in §354.1070 of this title (relating to Definitions).

(10) Potentially preventable readmission (PPR)--A return hospitalization of a person within a period specified by HHSC that may have resulted from deficiencies in the care or treatment provided to the person during a previous hospital stay or from deficiencies in post-hospital discharge follow-up. The term does not include a hospital readmission necessitated by the occurrence of unrelated events after the discharge. The term includes the readmission of a person to a hospital for:

(A) the same condition or procedure for which the person was previously admitted;

(B) an infection or other complication resulting from care previously provided;

(C) a condition or procedure that indicates that a surgical intervention performed during a previous admission was unsuccessful in achieving the anticipated outcome; or

(D) another condition or procedure of a similar nature, as determined by HHSC.

(11) Readmission chain--One or more PPRs that are clinically related to the same initial admission.

(12) Reporting time period--A state fiscal year (September through August) or other specified time frame as determined by HHSC.

(c) Calculating a PPR rate. Using claims during the reporting time period, HHSC will calculate an actual PPR rate and an expected PPR rate for each hospital that participates in the Medicaid program.

(1) The actual PPR rate is the number of readmission chains divided by the number of initial admissions, excluding readmissions that are not considered potentially preventable.

(2) The expected PPR rate is the expected number of readmission chains divided by the number of initial admissions, excluding readmissions that are not considered potentially preventable. The expected number of readmission chains is based on the hospital's case-mix relative to the case-mix of all Texas Medicaid hospitals during the reporting period.

(d) Comparing the PPR performance of all Medicaid hospitals. Using the rates determined in subsection (c) of this section, HHSC calculates a ratio of actual-to-expected PPR rates.

(e) Reporting results of PPR rate calculations. HHSC will provide a confidential report to each hospital that participates in the

Medicaid program regarding the hospital's performance with respect to potentially preventable readmissions, including the PPR rates calculated as described in subsection (c) of this section and the hospital's actual-to-expected ratio calculated as described in subsection (d) of this section.

(f) Hospitals subject to reimbursement adjustment and amount of adjustment.

(1) A hospital with an actual-to-expected PPR ratio equal to or greater than 1.10 and equal to or less than 1.25 is subject to a reimbursement adjustment of -1%;

(2) A hospital with an actual-to-expected PPR ratio greater than 1.25 is subject to a reimbursement adjustment of -2%.

(g) Claims subject to reimbursement adjustment.

(1) The reimbursement adjustments described in subsection (f) of this section apply to all Medicaid claims for dates of admission beginning on the earlier of:

(A) the effective date of this section or the first day of the month following the effective date if the section is not effective on the first day of the month; or

(B) the first day of the state fiscal year that is one year after the confidential report on which the reimbursement adjustments are based is posted on HHSC's or its designee's website and in the hospital-specific portal libraries.

(2) The reimbursement adjustments for a hospital will cease for dates of admission on the first day of the state fiscal year that is at least one year after the hospital receives a confidential report indicating an actual-to-expected ratio of less than 1.10.

§354.1446. Potentially Preventable Complications.

(a) Introduction. The Health and Human Services Commission (HHSC) may reward or penalize a hospital under this section based on the hospital's performance with respect to exceeding or failing to achieve outcome and process measures relative to all Texas Medicaid hospitals that address the rates of potentially preventable events.

(b) Definitions.

(1) Actual to Expected Ratio--The ratio of actual potentially preventable complications (PPC) inpatient stays compared with expected PPC inpatient stays, where the expected number depends on the all patient refined-diagnosis related group (APR-DRG) and is adjusted for the patient's severity of illness.

(A) Actual PPC reported uses five measures of incidence and cost:

(i) PPC inpatient stays refer to the number of stays with at least one PPC.

(ii) PPC rate refers to the number of inpatient stays with at least one PPC divided by the total number of stays.

(iii) PPC count refers to the number of PPCs.

(iv) PPC per 100 inpatient stays refers to the count of PPCs per 100 stays

(v) PPC cost determined by multiplying the estimated cost impact of a specific PPC by its frequency.

(B) Expected PPC results calculation is based on the statewide norms and is calculated from Medicaid traditional fee-for-service (FFS) and, if available, managed care data.

(2) Case-mix--A measure of the clinical characteristics of patients treated during the reporting time period. "Higher" case-mix refers to sicker patients who require more hospital resources.

(3) Inpatient claims during the reporting time period--Includes Medicaid traditional FFS and, if available, managed care data for inpatient hospital claims filed for reimbursement by a hospital that:

(A) had a date of admission occurring within the reporting time period;

(B) were adjudicated and approved for payment during the reporting time period and the six-month grace period that immediately followed, except for such claims that had zero inpatient days;

(C) were not inpatient stays for patients who are covered by Medicare;

(D) were not Medicaid spend-down claims;

(E) were not claims for newborn or pediatric clients under 18 years of age; and

(F) were not claims for patients diagnosed with major metastatic cancer, organ transplants, human immunodeficiency virus (HIV), or major trauma.

(4) HHSC--The Health and Human Services Commission or its designee.

(5) Hospital--A public or private institution licensed under Chapter 241 or Chapter 577, Health and Safety Code, including a general or special hospital as defined by §241.003, Health and Safety Code.

(6) Medicaid program--The medical assistance program established under Chapter 32, Human Resources Code.

(7) Norm--The Texas statewide average or the standard by which hospital PPC performance is compared.

(8) Potentially preventable event (PPE)--A potentially preventable admission, a potentially preventable ancillary service, a potentially preventable complication, a potentially preventable emergency room visit, a potentially preventable readmission, or a combination of those events, which are more fully defined in §354.1070 of this title (relating to Definitions).

(9) Potentially preventable complications (PPC)--A harmful event or negative outcome with respect to a person, including an infection or surgical complication, that:

(A) occurs after the person's admission to a hospital or long-term care facility; and

(B) may have resulted from the care, lack of care, or treatment provided during the hospital or long-term care facility stay rather than from a natural progression of an underlying disease.

(10) Reporting time period--A state fiscal year (September through August) or other specified time frame as determined by HHSC.

(c) Calculating a PPC rate. Using inpatient claims during the reporting time period, HHSC will calculate an actual PPC rate and an expected PPC rate for each hospital that participates in the Medicaid program.

(d) Comparing the PPC performance of all Medicaid hospitals. Using the rates determined in subsection (c) of this section, HHSC calculates a ratio of actual-to-expected PPC rates.

(e) Reporting results of PPC rate calculations. HHSC will provide a confidential report to each hospital that participates in the Medicaid program regarding the hospital's performance with respect to potentially preventable complications, including the PPC rates cal-

culated as described in subsection (c) of this section and the hospital's actual-to-expected ratio calculated as described in subsection (d) of this section.

(f) Hospitals subject to reimbursement adjustment and amount of adjustment.

(1) A hospital with an actual-to-expected PPC ratio equal to or greater than 1.10 and equal to or less than 1.25 is subject to a reimbursement adjustment of 2%.

(2) A hospital with an actual-to-expected PPC ratio greater than 1.25 is subject to a reimbursement adjustment of 2.5%.

(g) Claims subject to reimbursement adjustment.

(1) The reimbursement adjustments described in subsection (f) of this section apply to all Medicaid claims for dates of admission beginning November 1, 2013 and after.

(2) The reimbursement adjustments for a hospital will cease for dates of admission on the first day of the state fiscal year that is one year after the hospital receives a confidential report indicating an actual-to-expected ratio of less than 1.10.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300282
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 424-6900

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CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER J. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) proposes to repeal §§355.8043 and 355.8068 - 355.8072, concerning the methodology by which HHSC calculated supplemental Medicaid Upper Payment Limit (UPL) payments for inpatient, outpatient, and physician services.

Background and Purpose

The Texas Health and Human Services Commission (HHSC) proposes to repeal the rules that establish the methodology by which HHSC calculated supplemental Medicaid Upper Payment Limit (UPL) payments for inpatient, outpatient, and physician services. This action is part of the Centers for Medicare and Medicaid Services (CMS)-approved process to transition to a new supplemental payment process in a managed care environment under the Texas Healthcare Transformation and Quality Improvement Program 1115 Waiver.

CMS approved a five-year 1115 demonstration waiver designed to build on existing Texas health care reforms and to redesign health care delivery in Texas. The waiver establishes goals to improve the experience of care and the health of populations, while reducing the cost of health care without compromising quality. The waiver replaces hospital and physician supplemental funding (the former UPL programs), provides incentive payments for health care improvements, and directs more funding to hospitals that serve large numbers of uninsured patients.

The waiver creates two funding pools to replace UPL payments: the Uncompensated Care (UC) and the Delivery System Reform Incentive Payment (DSRIP) pools. UC pool payments are designed to help offset the costs of uncompensated care provided by a hospital or by other Medicaid providers. DSRIP pool payments are incentive payments to hospitals and other Medicaid providers that develop programs or strategies to enhance access to health care, the quality of care, and the health of the patients and families served.

With the implementation of new UC and DSRIP pool payments under the 1115 waiver, HHSC proposes to repeal §§355.8043 and 355.8068 - 355.8072, because rules governing the methodology by which HHSC calculated payments for the former UPL program are no longer needed.

Section-by-Section Summary

Sections 355.8043 and 355.8068 - 355.8072 contain obsolete language regarding UPL program payments for inpatient, outpatient, and physician services.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the repeals are in effect, there will be no fiscal impact to the state or local governments.

Cost to Persons and Effect on Local Economies

Ms. Rymal does not anticipate that there will be any economic cost to persons who are required to comply with this rule change. Repealing these rules will not affect a local economy.

Small Business and Micro-Business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses, as a result of enforcing or administering the proposed repeals. The providers that are impacted by repealing these rules may benefit by receiving additional funds through participating in the waiver.

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that for each of the first five years the rule repeals are in effect, the expected public benefit is that obsolete rules will be deleted from HHSC's rule base.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her private real property that would otherwise exist in the absence of government action and, therefore,

does not constitute a taking under Texas Government Code, §2007.043.

Public Comment

Written comments on the proposal may be submitted to Camille Casey, Rate Analysis Department-Hospital Reimbursement, Texas Health and Human Services Commission, P.O. Box 85200, MC H-400, Austin, TX 78708-5200; by fax to (512) 491-4030; or by e-mail at camille.casey@hhsc.state.tx.us within 30 days of publication in the *Texas Register.*

DIVISION 3. PHYSICIAN SERVICES

1 TAC §355.8043

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repeal is proposed under the Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient operation of the Medicaid program; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The repeal affects Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.8043. Supplemental Payments for Physician Services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300287
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 424-6900

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DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §§355.8068 - 355.8072

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repeals are proposed under the Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient operation of the Medicaid program; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The repeals affect Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.8068. Supplemental Payments to Certain Urban Hospitals.

§355.8069. Supplemental Payments to Certain Rural Public Hospitals.

§355.8070. Supplemental Payments to Private Hospitals.

§355.8071. Supplemental Payments to Children's Hospitals.

§355.8072. Supplemental Payments to State-Owned Hospitals.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300288
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 424-6900

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DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §355.8201, §355.8202

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8201, concerning Waiver Payments to Hospitals, and §355.8202, concerning Waiver Payments for Physician Services. The proposed amendments eliminate references to obsolete transition payments where appropriate, clarify eligibility requirements, and make other changes to conform the rule to the Centers for Medicare and Medicaid Services (CMS) approved waiver protocols.

Background and Justification

Sections 355.8201 and 355.8202 were adopted effective July 1, 2012. Payments under these sections were made subject to approval by CMS of relevant protocols that are described in the Texas Healthcare Transformation and Quality Improvement Program §1115(a) Medicaid demonstration waiver.

CMS has now approved the pertinent protocols, and HHSC implemented the eligibility requirements and payment methodologies described in these sections. HHSC proposes to amend the rules to conform to the approved protocols. Other amendments are intended to clarify eligibility requirements, to describe payment methodologies in greater detail, eliminate any prioritization

of one type of uncompensated care payment over another, and to describe how payments will be reduced to remain within aggregate limits. Finally, since transition payments are no longer available to hospitals or physician group practices, HHSC proposes to eliminate references to transition payments except as they still factor into the reconciliation processes.

Section-by-Section Summary

Proposed §355.8201 Waiver Payments to Hospitals

Proposed §355.8201(a) removes the condition that CMS approve all required protocols because that condition has now been met. The amendment also adds language stating that waiver payments must be in compliance with waiver protocols, HHSC instructions, and this rule section.

Proposed §355.8201(b)(1) removes the words "indigent care" from the definition of "indigent care affiliation agreement" because HHSC understands that not all affiliations under the demonstration waiver are for the purpose of providing indigent care. Additionally HHSC proposes moving the defined term from its previous place in the subsection to maintain alphabetical order.

Proposed §355.8201(b)(2) adds the definition of "anchor" as the governmental entity having primary administrative responsibilities for the Regional Healthcare Partnership.

Proposed §355.8201(b)(5) amends language to clarify that Delivery System Reform Incentive Payments are not offset against costs when calculating hospital specific limits.

HHSC proposes removing the definition of "DSH room" from the subsection, formerly §355.8201(b)(6), since that term is no longer used in the section.

Proposed §355.8201(b)(10) adds the definition of "institution for mental diseases" as a hospital that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness.

HHSC proposes removing the definition of "private hospital" from the subsection, formerly §355.8201(b)(11), since that term is no longer used in the section.

Proposed §355.8201(b)(15) amends the definition of "transition payment" to remove the reference to eligibility requirements in subsection (c)(2), because that section is proposed to be removed. The term remains in the rule because transition payment amounts are still referenced elsewhere in the rule for purposes of calculating aggregate payments and reconciling actual payments for the first demonstration year.

Proposed §355.8201(c) is amended to clarify that a hospital must notify the Rate Analysis Department in writing when changes affecting eligibility occur.

Proposed §355.8201(c)(1)(A) - (B) are amended to clarify that a hospital must be actively enrolled in Medicaid in Texas at the beginning of the demonstration year and have submitted and be eligible for payment for at least one inpatient or outpatient Medicaid claim during the demonstration year.

Proposed §355.8201(c)(1)(D) is amended to clarify that any hospital not operated by a governmental entity is required to submit an affiliation agreement and the prescribed certification forms from the hospital and governmental entity providing the non-federal share of the waiver payments.

Proposed §355.8201(c)(1)(D)(ii)(III) is amended to conform the language of the rule with the language contained in the certification form required to be executed by the governmental entity that is party to the affiliation agreement.

Proposed §355.8201(c)(1)(D)(iii) is added to specify the circumstances and deadlines for submitting the affiliation agreements and certifications described in subsection (c). The clause also adds language prohibiting any changes to the prescribed certification forms without the approval of HHSC.

HHSC proposes removing the transition payment eligibility paragraph, formerly §355.8201(c)(2). This language is obsolete since transition payments were available only during the first demonstration year.

Proposed §355.8201(c)(3) is amended to require documentation of the completion of a project or quality measure identified in the approved RHP plan (as opposed to completion of an objective) to be eligible to receive delivery reform incentive payments. This change is made to conform to the meaning of terms used in the approved waiver.

HHSC proposes deleting the private hospital eligibility requirement, formerly §355.8201(c)(3)(C), because it is redundant of information that is proposed in paragraph (1) of this subsection.

HHSC proposes deleting the paragraph describing payment frequency for transition payments, formerly §355.8201(e)(1), because HHSC is no longer making transition payments after the first demonstration year.

Proposed §355.8201(e)(2) clarifies the DSRIP payment frequency for the first and subsequent demonstration years.

Proposed §355.8201(e)(3) is added to authorize HHSC to modify the payment schedule or frequency when necessary.

Proposed §355.8201(f) is amended to refer the reader to the subsections in the rule that describe the methodologies HHSC will use to reduce payments when required by the applicable funding limitations.

HHSC proposes deleting the description of transition payment maximum payment amount calculations, formerly §355.8201(g), since HHSC is no longer making transition payments after the first demonstration year.

Proposed §355.8201(g)(1)(A) removes the reference to priority of reimbursement, as former §355.8201(g)(6) is proposed to be removed.

Proposed §355.8201(g)(1)(B) is amended to clarify that information in the uncompensated-care application must comply with application instructions and other guidance issued by HHSC. The proposed paragraph further clarifies the documentation that a hospital must provide to support cost and payment data outside the CMS cost report. The proposed paragraph also clarifies that the data period for new hospitals may differ from the data year and is based only on services provided after the hospital's Medicaid enrollment date.

HHSC proposes deleting the description of the methodology used for calculating uncompensated-care payments during the first demonstration year, formerly §355.8201(h)(1)(C), since transition payments will end after the first demonstration year.

Proposed §355.8201(g)(2) removes the reference to payment reductions described in paragraph (5) of the subsection, pertaining to transition payments, because transition payments will end after the first demonstration year.

Proposed §355.8201(g)(2)(A) is amended to clarify that the hospital-specific limit component of the uncompensated-care maximum payment amount is reduced by the amount of DSH payments for the same demonstration year. The proposed paragraph also prohibits institutions for mental disease (IMDs) from reporting cost and payment data in the uncompensated-care application for services provided to patients ages 21 through 64. This proposed amendment conforms to the uncompensated-care protocol approved by CMS.

Proposed §355.8201(g)(2)(D) specifies that payments made for a demonstration year under the Disproportionate Share Hospital program and for uncompensated care under the waiver, less "other eligible costs" described in subsection (g)(3), cannot exceed a hospital's specific limit calculated as described in §355.8066.

Proposed §355.8201(g)(3) is amended to remove references to costs applicable only to the first demonstration year.

Proposed §355.8201(g)(4) is amended to clarify that a hospital may not request any adjustments to cost and payment data that will result in an increase to its hospital-specific limit calculated as described in §355.8066.

Proposed §355.8201(g)(5) is amended to explain the methodology HHSC will use to revise and possibly reduce maximum annual uncompensated-care payment amounts when, in the aggregate for all waiver provider types, they are expected to exceed the amount approved by CMS for any demonstration year--sometimes referred to as the Uncompensated Care (UC) Pool amount. HHSC proposes to first estimate the amount of intergovernmental transfers (IGT) available for uncompensated care payments during a demonstration year and calculate revised payment amounts to each eligible hospital and physician group practice based on the IGT commitments. This paragraph also establishes that government-owned ambulance and dental providers are assumed to have commitments at 100 percent of the non-federal share of payments and their payments are not to be reduced. Then, if necessary, HHSC proposes to proportionately reduce the maximum annual uncompensated-care payment amounts for each eligible hospital and physician group practice to stay within the UC Pool amount. This paragraph also clarifies that revised maximum payment amounts calculated pursuant to this paragraph will not be re-calculated during a demonstration year, even if actual IGT amounts are less than the IGT commitments used to calculate the revised payment amounts.

HHSC proposes deleting the description of priority of reimbursement, formerly §355.8201(g)(6), since uncompensated care payments to a hospital will reimburse for all eligible costs at the same time.

Proposed §355.8201(g)(6) is added to prohibit duplication of costs in multiple uncompensated-care applications.

Proposed §355.8201(h) is amended to clarify that a DSRIP payment cannot exceed the amount reported in the RHP plan.

Proposed §355.8201(i)(1)(A) is amended to add a reference to the revised maximum payment amounts described in subsection (g)(5).

Proposed §355.8201(j) is amended to indicate that uncompensated-care payments made for a program year will be reconciled against actual costs incurred during that program year.

Proposed §355.8201(k)(1) clarifies that HHSC will recoup any overpayment identified by HHSC.

Proposed §355.8201(l) is added to authorize HHSC to impose a penalty, including withholding the fourth-quarter uncompensated-care payment, to hospitals that fail to comply with Category 4 reporting requirements set out in Chapter 354 of this title.

The proposed rule includes other technical corrections, numbering revisions, and non-substantive changes to make the rule more understandable.

Proposed §355.8202 Waiver Payments for Physician Services

Proposed §355.8202(a) removes the condition that CMS approve all required protocols because that condition has now been met. Also adds language stating that waiver payments must be in compliance with waiver protocols, HHSC instructions, and this rule section.

Proposed §355.8202(b) amends the definition of "transition payment" to remove the reference to eligibility requirements in subsection (g), because that section is proposed to be removed. The term remains in the rule because transition payment amounts are still referenced elsewhere in the rule for purposes of reconciling actual payments for the first demonstration year.

Proposed §355.8202(c)(1) is amended to clarify that a physician group practice must be actively enrolled in Medicaid in Texas at the beginning of the demonstration year and have submitted and be eligible for payment for at least one Medicaid claim during the demonstration year.

Proposed §355.8202(c)(4) is amended to remove the reference to transition payments, since transition payments are not available after the first demonstration year.

Proposed §355.8202(c)(4)(B) is added to allow a physician group practice that did not receive a supplemental payment during federal fiscal year 2011 to be eligible for waiver payments if it is the successor in a contract to another physician group practice that did receive such payments.

HHSC proposes deleting the paragraph describing payment frequency for transition payments, formerly §355.8202(e)(1), because HHSC is no longer making transition payments.

Proposed §355.8202(e)(2) clarifies the DSRIP payment frequency for the first and subsequent demonstration years.

Proposed §355.8202(e)(3) is added to authorize HHSC to modify the payment schedule or frequency when necessary.

Proposed §355.8202(f) is amended to refer the reader to the subsections in the rule that describe the methodologies HHSC will use to reduce payments when required by the applicable funding limitations.

HHSC proposes deleting the description of transition payment maximum payment amount calculations, formerly §355.8202(g), since HHSC is no longer making transition payments.

Proposed §355.8202(g)(1) deletes the reference to the first demonstration year since the first demonstration year has ended.

Proposed §355.8202(g)(1)(B)(i) is amended to indicate that the cost and payment data reported in the uncompensated-care application must comply with the application instructions or other guidance issued by HHSC.

Proposed §355.8202(g)(1)(B)(ii) is amended to allow a physician group practice paid under a contract to include costs in the UC application that are associated with an episode of care, so long as the costs are first reduced by any revenues associated with that episode of care. This change is proposed to bring the rule into line with CMS' guidance on the reporting of this type of cost in the UC application.

Proposed §355.8202(g)(2)(A) is amended to indicate that one component of the uncompensated-care payment amount is the sum of unreimbursed uninsured costs and Medicaid shortfall.

Proposed §355.8202(g)(4) is amended to explain the methodology HHSC will use to revise and possibly reduce maximum annual uncompensated-care payment amounts when, in the aggregate for all waiver provider types, they are expected to exceed the amount approved by CMS for any demonstration year--sometimes referred to as the Uncompensated Care (UC) Pool amount. HHSC proposes to first estimate the amount of intergovernmental transfers (IGT) available for uncompensated care payments during a demonstration year and calculate revised payment amounts to each eligible physician group practice and hospital based on the IGT commitments. This paragraph also establishes that government-owned ambulance and dental providers are assumed to have commitments at 100 percent of the non-federal share of payments and are not to be reduced. Then, if necessary, HHSC proposes to proportionately reduce the maximum annual uncompensated-care payment amounts for each eligible physician group practice and hospital to stay within the UC Pool amount. This paragraph also clarifies that revised maximum payment amounts calculated pursuant to this paragraph will not be re-calculated during a demonstration year, even if actual IGT amounts are less than the IGT commitments used to calculate the revised payment amounts.

Proposed §355.8202(g)(5) is added to prohibit duplication of costs in multiple uncompensated-care applications.

Proposed §355.8202(h) is amended to clarify that a DSRIP payment cannot exceed the amount reported in the RHP Plan.

Proposed §355.8202(i)(1) is amended to clarify that notice of the maximum payment amount or revised maximum payment amount and the maximum intergovernmental transfer amount necessary for a physician practice group to receive the maximum or revised maximum payment amount will be given prior to HHSC making any payment.

Proposed §355.8201(j) is amended to indicate that uncompensated-care payments made for a program year will be reconciled against actual costs incurred during that program year.

The proposed rule includes other technical corrections, numbering revisions, and non-substantive changes to make the rule more understandable.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for the first five years the proposed amendments are in effect, there are no fiscal implications for state government as a result of enforcing or administering the proposed amendments to these sections. There are also no foreseeable implications of the proposed amendments to local governments.

Small Business and Micro-business Impact Analysis

Pam McDonald, Director of Rate Analysis, has determined that there will be no effect on small businesses or micro businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the proposed amendments.

Public Benefit

Pam McDonald has determined that for each of the first five years the amended rules are in effect, the anticipated public benefit expected as a result of enforcing the rules will be the transformation of the current delivery of care and payment systems in Texas to one that is more coordinated, efficient, and delivers a higher quality of care. Further, the public will benefit from a plan for investments in system transformation that is driven by the needs of local hospitals, communities, and populations. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her real property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Hearing

HHSC will conduct a public hearing on Tuesday, February 19, 2013, beginning at 2:00 p.m., to receive comments on its proposed changes to §355.8201, concerning Waiver Payments to Hospitals, and §355.8202, concerning Waiver Payments for Physician Services. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

Public Comment

Written comments on the proposal may be submitted to Rhonda Hites in the Rate Analysis Department, Texas Health and Human Services Commission, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, by fax to (512) 491-1436, or by e-mail to rhonda.hites@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendments are proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in

Texas; Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The amendments affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.8201. Waiver Payments to Hospitals.

(a) Introduction. [~~Subject to approval by the Centers for Medicare and Medicaid Services of all required protocols described in the~~] Texas Healthcare Transformation and Quality Improvement Program §1115(a) Medicaid demonstration waiver[~~,~~] payments are available under this section for eligible hospitals described in subsection (c) of this section. Waiver payments to hospitals must be in compliance with the Centers for Medicare and Medicaid Services approved waiver Program Funding and Mechanics Protocol, HHSC waiver instructions and this section.

(b) Definitions.

(1) Affiliation agreement--An agreement, entered into between one or more private hospitals and a governmental entity that does not conflict with federal or state law. HHSC does not prescribe the form of the agreement.

(2) Anchor--The governmental entity identified by HHSC as having primary administrative responsibilities on behalf of a Regional Healthcare Partnership (RHP).

(3) [~~(1)~~] Centers for Medicare and Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(4) [~~(2)~~] Data year--A 12-month period that is described in §355.8066 of this title (relating to the Hospital-Specific Limit Methodology) and from which HHSC will compile cost and payment data to determine uncompensated-care payment amounts. This period corresponds to the Disproportionate Share Hospital data year.

(5) [~~(3)~~] Delivery System Reform Incentive Payments (DSRIP)--Payments related to the development or implementation of a program of activity that supports a hospital's efforts to enhance access to health care, the quality of care, and the health of patients and families it serves. These payments are not considered patient-care revenue and are not offset against the hospital's costs when calculating the hospital-specific limit as described in §355.8066 of this title. [~~Disproportionate Share Hospital expenditures or other expenditures related to the cost of patient care.~~]

(6) [~~(4)~~] Demonstration year--The 12-month period beginning October 1 for which the payments calculated under this section are made. This period corresponds to the Disproportionate Share Hospital program year.

(7) [~~(5)~~] Disproportionate Share Hospital (DSH)--A hospital participating in the Texas Medicaid program that serves a disproportionate share of low-income patients and is eligible for additional reimbursement from the DSH fund.

[~~(6) DSH room--The difference between a hospital's interim hospital-specific limit, as calculated in §355.8066 of this title, and the total Medicaid payments paid to the hospital during the demonstration year.~~]

(8) [~~(7)~~] Governmental entity--A state agency or a political subdivision of the state. A governmental entity includes a hospital authority, hospital district, city, county, or state entity.

(9) [~~(8)~~] HHSC--The Texas Health and Human Services Commission or its designee.

[~~(9) Indigent care affiliation agreement--An agreement, entered into between one or more private hospitals and a governmental entity, that does not conflict with federal or state law. HHSC does not prescribe the form of the agreement.~~]

(10) Institution for mental diseases (IMD)--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness.

(11) [~~(10)~~] Intergovernmental transfer--A transfer of public funds from a governmental entity to HHSC.

[~~(11) Private hospital--A hospital that is not owned or operated by a governmental entity.~~]

(12) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a governmental entity. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(13) Regional Healthcare Partnership (RHP)--A collaboration of interested participants that work collectively to develop and submit to the state a regional plan for health care delivery system reform. Regional Healthcare Partnerships will support coordinated, efficient delivery of quality care and a plan for investments in system transformation that is driven by the needs of local hospitals, communities, and populations.

(14) RHP plan--A multi-year plan within which participants propose their portion of waiver funding and DSRIP projects.

(15) Transition payment--Payments available only during the first demonstration year to hospitals that previously participated in a supplemental payment program under the Texas Medicaid State Plan [~~and meet other eligibility requirements described in subsection (c)(2) of this section~~].

(16) Uncompensated-care payments--Payments intended to defray the uncompensated costs of services that meet the definition of "medical assistance" contained in §1905(a) of the Social Security Act that are provided by the hospital to Medicaid eligible or uninsured individuals.

(17) Uninsured patient--An individual who has no health insurance or other source of third-party coverage for services, as defined by CMS.

(18) Waiver--The Texas Healthcare Transformation and Quality Improvement Program Medicaid demonstration waiver under §1115 of the Social Security Act.

(c) Eligibility. A hospital that meets the requirements described in this subsection may receive payments under this section. A hospital must notify HHSC Rate Analysis in writing within 30 days of changes in ownership, operation, or affiliation that may affect the hospital's continued eligibility for payments under this section.

(1) Generally. To be eligible for any payment under this section, a hospital must:

(A) be actively enrolled as a [~~Texas~~] Medicaid provider in the State of Texas at the beginning of the demonstration year;

(B) have submitted, and be eligible to receive payment for, a Medicaid inpatient or outpatient claim for payment during the demonstration year;

(C) [~~(B)~~] have a source of public funding for the non-federal share of waiver payments; and

(D) [~~(C)~~] if a [~~private~~] hospital not operated by a governmental entity, has [~~have~~] filed with HHSC an [~~indigent care~~] affiliation agreement and the documents described in clauses (i) and (ii) of this subparagraph.

(i) The [~~A private~~] hospital must certify on a form prescribed by HHSC:

(I) that it is a privately-operated [~~private~~] hospital [~~as defined in this section~~];

(II) that no part of any payment to the hospital under this section will be returned or reimbursed to a governmental entity with which the hospital affiliates; and

(III) that no part of any payment under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the hospital's receipt of the supplemental funds.

(ii) The governmental entity that is party to the [~~indigent care~~] affiliation agreement must certify on a form prescribed by HHSC:

(I) that the governmental entity has not received and has no agreement to receive any portion of the payments made to any hospital that is party to the agreement;

(II) that the governmental entity has not entered into a contingent fee arrangement related to the governmental entity's participation in the waiver program;

(III) that the governmental entity adopted the conditions described in the certification form prescribed by HHSC [~~is authorized to participate in the waiver program~~] pursuant to a vote of the governmental entity's governing body in a public meeting preceded by public notice published in accordance with the governmental entity's usual and customary practices or the Texas Open Meetings Act, as applicable; and

(IV) that all affiliation agreements, consulting agreements, or legal services agreements executed by the governmental entity related to its participation in this waiver payment program are available for public inspection upon request.

(iii) Submission requirements.

(I) Initial submissions. The parties must initially submit the affiliation agreements and certifications described in this subsection on the earlier of the following occurrences:

(-a-) The date the RHP Plan is submitted for the RHP in which the hospital is participating; or

(-b-) The date the hospital submits the uncompensated-care application that is further described in paragraph (2) of this subsection.

(II) Subsequent submissions. The parties must submit revised documentation as follows:

(-a-) When the nature of the affiliation changes or parties to the agreement are added or removed, the parties must submit the revised affiliation agreement and related hospital and governmental entity certifications.

(-b-) When there are changes in ownership, operation, or provider identifiers, the hospital must submit a revised hospital certification.

(-c-) The parties must submit the revised documentation before HHSC calculates the next payment to the hospital under this section.

(III) The certification forms must not be modified except for those changes approved by HHSC.

[~~(2) Transition payments. For a hospital to be eligible to receive transition payments, in addition to the requirements in paragraph (1) of this subsection, the hospital:~~]

[~~(A) must have received supplemental payments under the Texas Medicaid State Plan for claims adjudicated in one or more months between October 1, 2010, and September 30, 2011; or~~]

[~~(B) for a hospital that received the supplemental payments described in subparagraph (A) of this paragraph through the private hospital supplemental payment program, must have filed the documents described in paragraph (1)(C) of this subsection before September 30, 2011.~~]

(2) [~~(3)~~] Uncompensated-care payments. For a hospital to be eligible to receive uncompensated-care payments, in addition to the requirements in paragraph (1) of this subsection, the hospital:

(A) must submit to HHSC an uncompensated-care application, as is more fully described in subsection (g) [~~(h)~~](1) of this section, by the deadline specified by HHSC;

(B) must submit to HHSC documentation of:

(i) its participation in an RHP; or

(ii) approval from CMS of its eligibility for uncompensated-care payments without participation in an RHP.[~~; and~~]

[~~(C) if a private hospital, must submit to HHSC the documents described in paragraph (1)(C) of this subsection.~~]

(3) [~~(4)~~] Delivery system reform incentive payments. For a hospital to be eligible to receive delivery system reform incentive payments, in addition to the requirements in paragraph (1) of this subsection, the hospital must submit to HHSC documentation of completion of a project or quality measure [~~one or more of the defined objectives~~] identified in the approved RHP plan.

(d) Source of funding. The non-federal share of funding for payments under this section is limited to timely receipt by HHSC of public funds from a governmental entity.

(e) Payment frequency. HHSC will distribute waiver payments as follows and on a schedule to be determined by HHSC:

[~~(1) Transition payments will be distributed at least quarterly during the first demonstration year.~~]

(1) [~~(2)~~] Uncompensated care payments will be distributed at least quarterly after the uncompensated-care application is processed.

(2) [~~(3)~~] DSRIP payments will be distributed at least annually, not to exceed two payments per hospital:

(A) for payments attributable to [~~during~~] the first demonstration year, upon [~~CMS and~~] HHSC review and approval of the RHP plan; and

(B) for payments attributable to [~~during~~] subsequent demonstration years, upon achievement of RHP plan metrics as reviewed and approved by CMS and HHSC.

(3) The payment schedule or frequency may be modified as specified by CMS or HHSC.

(f) Funding limitations. [~~Payments made under this section are limited by:~~]

(1) Payments made under this section are limited by the maximum aggregate amount of [~~federal~~] funds approved by CMS for uncompensated care and DSRIP payments for each year that the waiver is in effect. If payments for uncompensated care attributable to a demonstration year are expected to exceed the aggregate amount of funds approved by CMS for that demonstration year, HHSC will reduce payments as described in subsection (g)(5) of this section.[~~; and~~]

(2) Payments made under this section are limited by the availability of funds identified in subsection (d) of this section. If sufficient funds are not available for all payments for which a hospital is eligible, HHSC will reduce payments as described in subsection (i)(2) of this section.

[~~(g) Transition maximum payment amount.~~]

[~~(1) For a hospital participating in the 2012 DSH program, the maximum amount a hospital may receive in transition payments is the lesser of:~~]

[~~(A) the hospital's 2012 DSH room; or~~]

[~~(B) the amount the hospital received in supplemental payments under the Texas Medicaid State Plan for claims adjudicated between October 1, 2010, and September 30, 2011.~~]

[~~(2) For a hospital not participating in the 2012 DSH program, the hospital is eligible to receive the amount it received in supplemental payments under Texas Medicaid State Plan for claims adjudicated between October 1, 2010, and September 30, 2011.~~]

[~~(3) If a hospital had claims adjudicated in fewer than 12 months between October 1, 2010, and September 30, 2011, the payment amount will be annualized to cover the entire 12-month period.~~]

(g) [~~(h)~~] Uncompensated-care maximum payment amount.

(1) Application.

(A) Cost and payment data reported by the hospital in the uncompensated-care application is used to:

(i) calculate the annual maximum uncompensated-care payment amount for the applicable demonstration year, as described in paragraph (2) of this subsection; and

[~~*(ii)* determine the priority of reimbursement, as described in paragraph (6) of this subsection; and~~]

(ii) [~~(iii)~~] reconcile the actual uncompensated-care costs reported by the hospital for the data year with uncompensated-care waiver payments, if any, made to the hospital for the same period. The reconciliation process is more fully described in subsection (j) [~~(k)~~] of this section.

(B) Unless otherwise instructed in the application, the hospital must base the cost and payment data reported in the application on its applicable as-filed CMS 2552 Cost Report For Electronic Filing Of Hospitals or reports corresponding to the data year and must comply with the application instructions or other guidance issued by HHSC.

(i) When the application requests data or information outside of the as-filed cost report, the hospital must provide all requested [~~sufficient~~] documentation to support the reported data or information.

(ii) For a new hospital, the cost and payment data period may differ from the data year, resulting in the eligible uncompensated costs based only on services provided after the hospital's Medicaid enrollment date.

[~~(C) For the first demonstration year, HHSC will use the methodology described in this subsection to determine an uncompensated-care maximum payment amount for each hospital that submits an application. After submitting the application, the hospital may not request that the amount calculated in subsection (g) of this section be used instead.~~]

(C) [~~(D)~~] If a hospital withdraws from participation in an RHP, the hospital must submit an uncompensated-care application reporting its actual costs and payments for any period during which the hospital received uncompensated-care payments. The application will be used for the purpose described in paragraph (1)(A)(ii)[~~(iii)~~] of this subsection. If a hospital fails to submit the application reporting its actual costs, HHSC will recoup the full amount of uncompensated-care payments to the hospital for the period at issue.

(2) Calculation. A hospital's annual maximum uncompensated-care payment amount is the sum of the following components[~~, except that the sum may be reduced as described in paragraph (5) of this subsection~~]:

(A) The interim hospital specific limit, calculated as described in §355.8066 of this title, except that an IMD may not report cost and payment data in the uncompensated-care application for services provided during the data year to Medicaid-eligible and uninsured patients ages 21 through 64, less any payments to be made under the DSH program for the same demonstration year, calculated as described in §355.8065 of this title (relating to Disproportionate Share Hospital (DSH) Reimbursement Methodology);

(B) Other eligible costs for the data year, as described in paragraph (3) of this subsection; and

(C) Cost and payment adjustments, if any, as described in paragraph (4) of this subsection.

(D) In no case can the sum of payments made to a hospital for a demonstration year for DSH and uncompensated-care payments, less the payments described in paragraph (3) of this subsection, exceed a hospital's specific limit as determined in §355.8066 of this title.

(3) Other eligible costs.

(A) In addition to cost and payment data that is used to calculate the hospital-specific limit, as described in §355.8066 of this title, a hospital may also claim reimbursement under this section for uncompensated care, as specified in the uncompensated-care application, that is related to the following services provided to Medicaid-eligible and uninsured patients:

(i) direct patient-care services of physicians and mid-level professionals[~~, except that during the first demonstration year, costs of physician group practices that received transition payments may not be claimed by the hospital~~];

(ii) pharmacy services; and

(iii) clinics.

(B) The costs described in subparagraph (A) of this paragraph are not considered inpatient or outpatient Medicaid payments for the purpose of the DSH audit described in §355.8065 of this title [~~(related to Disproportionate Share Hospital (DSH) Reimbursement Methodology)~~].

(4) Adjustments. When submitting the uncompensated-care application, hospitals may request that cost and payment

data from the data year be adjusted to reflect increases or decreases in costs resulting from changes in operations or circumstances.

(A) A hospital [~~may request that~~]:

(i) may request that costs not reflected on the as-filed cost report, but which would be incurred for the demonstration year, be included when calculating payment amounts; [~~or~~]

(ii) may request that costs reflected on the as-filed cost report, but which would not be incurred for the demonstration year, be excluded when calculating payment amounts; and[~~.~~]

(iii) may not request any changes to increase its interim hospital specific limit.

(B) Documentation supporting the request must accompany the application. HHSC will deny a request if it cannot verify that costs not reflected on the as-filed cost report will be incurred for the demonstration year.

(5) Reduction to stay within aggregate limits. If the sum of the uncompensated-care maximum payment amounts, including transition payments, calculated under this subsection for all eligible hospitals plus the sum of uncompensated-care maximum payment amounts for all eligible physician group practices, calculated as described in §355.8202 of this title (relating to Waiver Payments for Physician Services), the sum of uncompensated-care maximum payment amounts for all eligible governmental ambulance providers, calculated as described in §355.8600 of this title (relating to Reimbursement for Ambulance Services) and the sum of uncompensated-care maximum payment amounts for all eligible publicly owned dental providers, calculated as described in §355.8441 of this title (relating to Reimbursement Methodologies for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services) exceeds the aggregate amount of funds approved by CMS for uncompensated care payments in a demonstration year, HHSC will take the following steps:[~~. In the first demonstration year, HHSC will reduce the amount calculated as described in paragraph (2) of this subsection by the amount of all transition payments to the hospital prior to the first uncompensated-care payment. This reduction will be applied in the same priority as that described in paragraph (6) of this subsection.~~]

(A) Obtain from each RHP Anchor an up-to-date breakdown of IGT commitments from all governmental entities, including governmental entities outside of the RHP, that will be providing IGT for uncompensated care or transition payments for each hospital and physician group practice within the RHP that is eligible for such payments for the demonstration year in question. Since ambulance and dental uncompensated-care payments are limited to government-owned providers, these providers are assumed to have commitments for 100 percent of the non-federal share of their payments and are not to be reduced.

(B) Calculate a revised uncompensated-care annual maximum payment amount for each eligible hospital and physician group practice based on the IGT commitments identified for such payments in subparagraph (A) of this paragraph; and

(C) Sum the revised uncompensated-care annual maximum payment amounts for all eligible hospitals and eligible physician group practices with the maximum payment amounts for all eligible governmental ambulance providers and eligible publicly-owned dental providers.

(i) If the sum from this subparagraph is equal to or less than the demonstration year annual aggregate amount approved by CMS, HHSC will assign each provider its revised payment amount;

(ii) If the sum from this subparagraph is greater than the aggregate amount approved by CMS, HHSC will proportionately reduce each revised hospital annual payment amount and revised physician group practice annual payment amount to stay within the aggregate limit.

(D) Once reductions to stay within aggregate limits are calculated, HHSC will not re-calculate the resulting payments for any provider during the demonstration year, including if the IGT commitments upon which the reduction calculations were based are different than actual IGT amounts.

(6) Prohibition on duplication of costs. Eligible uncompensated-care costs cannot be reported on multiple uncompensated-care applications, including uncompensated-care applications for other programs. Reporting on multiple uncompensated-care applications is duplication of costs. [~~Priority of reimbursement. Uncompensated-care payments to a hospital under this section, including payments described in subsection (j)(3) of this section, will first reimburse the hospital for those costs described in paragraph (3) of this subsection, including adjustments, if any, under paragraph (4) of this subsection. When all such costs have been reimbursed, uncompensated-care payments will reimburse the hospital for its remaining allowable uncompensated-care costs.~~]

(h) [~~(i)~~] Delivery System Reform Incentive Payment maximum payment amounts. The approved RHP plan establishes the payment amount associated with a particular project or quality measure. DSRIP payments cannot exceed the amount reported in the RHP Plan.

(i) [~~(j)~~] Payment methodology.

(1) Notice. Prior to making any category of payment described in subsections (g) or[~~,~~] (h) [~~and (i)~~] of this section, HHSC will give notice of the following information:

(A) the maximum payment amount or revised maximum payment amount for the payment period (based on whether the payment is made quarterly, semi-annually, or annually);

(B) the maximum intergovernmental transfer amount necessary for a hospital to receive the amount described in subparagraph (A) of this paragraph; and

(C) the deadline for completing the intergovernmental transfer.

(2) Payment amount. The amount of the payment to a hospital will be determined based on the amount of funds transferred by the affiliated governmental entity or entities as follows [~~described below~~]:

(A) If the governmental entity transfers the maximum amount referenced in paragraph (1) of this subsection, the hospital will receive the full payment amount calculated for that payment period.

(B) If a governmental entity does not transfer the maximum amount referenced in paragraph (1) of this subsection, HHSC will determine the payment amount to each hospital owned by or affiliated with that governmental entity as follows:

(i) For uncompensated-care payments as described in subsection [~~subsections~~] (g) [~~and (h)~~] of this section:

(I) At the time the transfer is made, the governmental entity notifies [~~may notify~~] HHSC, on a form prescribed by HHSC, of the share of the intergovernmental transfer to be allocated to each hospital owned by or affiliated with that entity; or

(II) In the absence of the notification described in subclause (I) of this clause, each hospital owned by or affiliated with the governmental entity will receive a portion of its maximum payment amount for that period, based on the hospital's percentage of the total maximum payment amounts for all hospitals owned by or affiliated with that governmental entity.

(ii) For DSRIP payments described in subsection (h) [~~(i)~~] of this section, each hospital owned by or affiliated with the governmental entity that has completed a project or quality measure will receive a portion of the value associated with that measure (as specified in the RHP plan) that is proportionate to the total value of all projects or quality measures that are completed for that period by hospitals owned by or affiliated with that governmental entity.

(C) For a hospital that is affiliated with multiple governmental entities, in the event those governmental entities transfer more than the maximum intergovernmental transfer amount that can be provided for that hospital, HHSC will calculate the amount of intergovernmental transfer funds necessary to fund the hospital to its payment limit and refund the remaining amount to the governmental entities identified by HHSC.

(3) Final payment opportunity. Within payments described in [~~subsections (g), (h), and (i) of~~] this section, a governmental entity that does not transfer the maximum intergovernmental transfer amount described in paragraph (1) of this subsection during a demonstration year will be allowed to fund the remaining payments at the time of the final payment from that category for that demonstration year. The intergovernmental transfer will be applied in the following order:

(A) To the final payment from that category up to the maximum amount;

(B) To remaining balances from that category for prior payment periods in the demonstration year.

(j) [~~(k)~~] Reconciliation. Beginning in the third demonstration year, data on the uncompensated-care application will be used to reconcile actual costs incurred by the hospital for the data year with uncompensated-care payments, if any, made to the hospital for [~~during~~] the same period:

(1) If a hospital received payments in excess of its actual costs, the overpaid amount will be recouped from the hospital, as described in subsection (k) [~~(l)~~] of this section.

(2) If a hospital received payments less than its actual costs, and if HHSC has available waiver funding for the data year in which the costs were accrued, the hospital may receive reimbursement for some or all of those actual documented unreimbursed costs.

(3) Transition payments are not subject to reconciliation under this subsection.

(k) [~~(l)~~] Recoupment.

(1) In the event of an overpayment identified by HHSC [~~as described in subsection (k)(1) of this section,~~] or a disallowance by CMS of federal financial participation related to a hospital's receipt or use of payments under this section, HHSC may recoup an amount equivalent to the amount of the overpayment or disallowance. The non-federal share of any funds recouped from the hospital will be returned to the entity that owns or is affiliated with the hospital.

(2) Payments under this section may be subject to adjustment for payments made in error, including, without limitation, adjustments under §371.1711 of this title (relating to Recoupment of Overpayments and Debts) [~~§371.1703 of this title (relating to Recovery of Overpayments)~~], 42 CFR Part 455, and Chapter 403, Texas Government Code. HHSC may recoup an amount equivalent to any such adjustment.

(3) HHSC may recoup from any current or future Medicaid payments as follows:

(A) HHSC will recoup from the hospital against which any overpayment was made or disallowance was directed.

(B) If, within 30 days of the hospital's receipt of HHSC's written notice of recoupment, the hospital has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all future Medicaid payments from the hospital until HHSC has recovered an amount equal to the amount overpaid or disallowed.

(l) Penalty for failure to complete Category 4 reporting requirements for Regional Healthcare Partnerships. Hospitals must comply with all Category 4 reporting requirements set out in Chapter 354 of this title, Subchapter D (relating to Texas Healthcare Transformation and Quality Improvement Program). If a hospital fails to complete required Category 4 reporting measures by the last quarter of a demonstration year:

(1) the hospital will forfeit its uncompensated-care payments for that quarter; or

(2) the hospital may request from HHSC a six-month extension from the end of the demonstration year to report any outstanding Category 4 measures.

(A) The fourth-quarter payment will be made upon completion of the outstanding required Category 4 measure reports within the six-month period.

(B) A hospital may receive only one six-month extension to complete required Category 4 reporting for each demonstration year.

§355.8202. Waiver Payments for Physician Services.

(a) Introduction. Payments [~~Subject to approval by the Centers for Medicare and Medicaid Services of all required protocols described in the Texas Healthcare Transformation and Quality Improvement Program §1115(a) Medicaid demonstration waiver, payments~~] are available under this section for an eligible physician group practice described in subsection (c) of this section. Waiver payments to an eligible physician group practice must be in compliance with the Centers for Medicare and Medicaid Services approved waiver Program Funding and Mechanics Protocol, HHSC waiver instructions, and this section.

(b) Definitions.

(1) Centers for Medicare and Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(2) Demonstration year--The 12-month period beginning October 1 for which the payments calculated under this section are made. This period corresponds to the Disproportionate Share Hospital program year.

(3) Delivery System Reform Incentive Payments (DSRIP)--Payments related to the development or implementation of a program of activity that supports efforts to enhance access to health care, the quality of care, and the health of patients and families it serves.

(4) Governmental entity--A state agency or a political subdivision of the state. A governmental entity includes a hospital authority, hospital district, city, county, or state entity.

(5) HHSC--The Texas Health and Human Services Commission or its designee.

(6) Intergovernmental transfer--A transfer of public funds from a governmental entity to HHSC.

(7) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a governmental entity. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(8) Regional Healthcare Partnership (RHP)--A collaboration of interested participants that work collectively to develop and submit to the state a regional plan for health care delivery system reform. Regional Healthcare Partnerships will support coordinated, efficient delivery of quality care and a plan for investments in system transformation that is driven by the needs of local hospitals, communities, and populations.

(9) RHP plan--A multi-year plan within which participants propose their portion of waiver funding and DSRIP projects.

(10) Transition payment--Payments available only during the first demonstration year [~~and calculated as described in subsection (g) of this section~~].

(11) Uncompensated-care payments--Payments available after the first demonstration year and calculated as described in subsection (g) [~~(h)~~] of this section. Uncompensated-care payments are intended to defray the uncompensated costs of services that meet the definition of "medical assistance" contained in §1905(a) of the Social Security Act that are provided by the physician group practice to Medicaid eligible or uninsured individuals.

(12) Uninsured patient--An individual who has no health insurance or other source of third-party coverage for services, as defined by CMS.

(13) Waiver--The Texas Healthcare Transformation and Quality Improvement Program Medicaid demonstration waiver under §1115 of the Social Security Act.

(c) Eligibility. A physician group practice is eligible to receive payments under this section if:

(1) it is actively enrolled as a [~~Texas~~] Medicaid provider in the State of Texas at the beginning of the demonstration year and has submitted, and is eligible to receive payment for, a Medicaid claim for payment during the demonstration year;

(2) it has a source of intergovernmental transfer (IGT) as the non-federal share of the payments;

(3) for a private physician group practice only, it files documents with HHSC by the date specified by HHSC, certifying that:

(A) all funds transferred to HHSC as the non-federal share of the waiver payments are public funds; and

(B) no part of any payment received by the physician group practice under this section will be returned to the governmental entity that transferred to HHSC the non-federal share of the waiver payments;

(4) for [~~transition payments and~~] uncompensated-care payments, in addition to the requirements described in paragraphs (1) - (3) of this subsection, either:

(A) it received a supplemental payment under the Texas Medicaid State Plan for claims adjudicated in one or more months between October 1, 2010, and September 30, 2011; or [~~and~~]

(B) it is the successor in a contract to a physician group practice that received a supplemental payment under the Texas Medicaid State Plan for claims adjudicated in one or more months between October 1, 2010, and September 30, 2011; and

(5) for delivery system reform incentive payments, in addition to the requirements described in paragraphs (1) - (3) of this subsection, it submits to HHSC documentation of completion of one or more of the defined objectives identified in the approved RHP plan.

(d) Source of funding.

(1) The non-federal share of funding for payments under this section is limited to and obtained through an intergovernmental transfer from the governmental entity that owns or is affiliated with the physician group practice receiving the payment.

(2) An intergovernmental transfer that is not received by the date specified by HHSC may not be accepted.

(e) Payment frequency. HHSC will distribute waiver payments as follows and on a schedule to be determined by HHSC:

[~~(1) Transition payments will be distributed at least quarterly during the first demonstration year.~~]

(1) [~~(2)~~] Uncompensated-care payments will be distributed at least quarterly after the uncompensated care-application is processed.

(2) [~~(3)~~] delivery system reform incentive payments will be distributed at least annually, not to exceed two payments per physician group practice,[~~:~~]

[~~(A) during the first demonstration year, upon CMS and HHSC approval of the RHP plan; and~~]

[~~(B)~~] [~~during subsequent demonstration years,~~] upon achievement of RHP plan metrics as reviewed and approved by CMS and HHSC.

(3) The payment schedule or frequency may be modified as specified by CMS or HHSC.

(f) Funding limitations. [~~Payments made under this section are limited by:~~]

(1) Payments made under this section are limited by the maximum aggregate amount of federal funds approved by CMS for uncompensated-care payment to providers for each demonstration year. If payments for uncompensated care attributable to a demonstration year are expected to exceed the aggregate amount of funds approved by CMS for that demonstration year, HHSC will reduce payments as described in subsection (g)(4) of this section.[~~; and~~]

(2) Payments made under this section are limited by the availability of funds identified in subsection (d) of this section. If sufficient funds are not available for all payments for which a physician group practice is eligible, HHSC will reduce payments as described in subsection (i)(2) of this section.

[~~(g) Transition payment amount. For each physician group practice eligible to receive a payment under this section, HHSC will determine a maximum transition payment amount that is equal to the amount of supplemental payments made to the physician group practice under the Texas Medicaid State Plan for claims adjudicated between October 1, 2010, and September 30, 2011. If the physician practice group had claims adjudicated in fewer than 12 months, the payment amount will be annualized to cover the entire 12-month period.~~]

(g) [~~(h)~~] Uncompensated-care maximum payment amount.

(1) Application. Payments to eligible physician group practices are [after the first demonstration year will be] based on cost and payment data reported by the physician group practice on an application form prescribed by HHSC.

(A) Cost and payment data reported by the physician group practice in the uncompensated-care application is used to:

(i) calculate the annual maximum uncompensated-care payment amount for the applicable demonstration year, as described in paragraph (2) of this subsection; and

(ii) reconcile the actual uncompensated-care costs reported by the physician group practice for a prior period with uncompensated-care waiver payments, if any, made to the practice for the same period. The reconciliation process is more fully described in subsection (j) [(k)] of this section.

(B) Unless otherwise instructed in the application:

(i) the cost and payment data reported in the application must be consistent with Medicare cost-reporting principles and must comply with the application instructions or other guidance issued by HHSC, and the physician group practice must maintain sufficient documentation to support the reported data or information; and

(ii) the costs associated with an episode of care where a physician group practice is paid under contract must be reduced by any revenues associated with that episode of care prior to inclusion [may not be included] in the uncompensated care application.

(C) If a physician group practice withdraws from participation in the waiver, the practice must submit an uncompensated-care application reporting its actual costs and payments for any period during which the practice received uncompensated-care payments. The application will be used for the purpose described in subparagraph (A)(ii) of this paragraph. If a practice fails to submit the application reporting its actual costs, HHSC will recoup the full amount of uncompensated-care payments to the practice for the period at issue.

(2) Calculation. A physician group practice's annual maximum uncompensated-care payment amount is the sum of the following components:

(A) Its unreimbursed uninsured costs and Medicaid shortfall, as reported on the uncompensated-care application; and

(B) Cost and payment adjustments, if any, as described in paragraph (3) of this subsection.

(3) Adjustments. When submitting the uncompensated-care application, physician group practices may request that cost and payment data from the reporting period be adjusted to reflect increases or decreases in costs resulting from changes in operations or circumstances.

(A) A physician group practice may request that:

(i) Costs not reflected on the financial documents supporting the application, but which would be incurred for the demonstration year, be included when calculating payment amounts; or

(ii) Costs reflected on the financial documents supporting the application, but which would not be incurred for the demonstration year, be excluded when calculating payment amounts.

(B) Documentation supporting the request must accompany the application. HHSC will deny a request if it cannot verify that costs not reflected on the financial documents supporting the application will be incurred for the demonstration year.

(4) Reduction to stay within aggregate limits. If the sum of the uncompensated-care maximum payment amounts, including transition payments, calculated under this subsection for all eligible physician group practices plus the sum of uncompensated-care maximum payment amounts for all eligible hospitals, calculated as described in §355.8201 of this title (relating to Waiver Payments to Hospitals), the sum of uncompensated-care maximum payment amounts for all eligible governmental ambulance providers, calculated as described in §355.8600 of this title (relating to Reimbursement for Ambulance Services), and the sum of uncompensated-care maximum payment amounts for all eligible publicly owned dental providers, calculated as described in §355.8441 of this title (relating to Reimbursement Methodologies for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services) exceeds the aggregate amount of funds approved by CMS for uncompensated care payments in a demonstration year, HHSC will take the following steps:

(A) Obtain from each RHP anchor an up-to-date breakdown of IGT commitments from all governmental entities, including governmental entities outside of the RHP, that will be providing IGT for uncompensated care or transition payments for each physician group practice and hospital within the RHP that is eligible for such payments for the demonstration year in question. Since ambulance and dental uncompensated-care payments are limited to government-owned providers, these providers are assumed to have commitments for 100 percent of the non-federal share of their payments, and their payments are not to be reduced.

(B) Calculate a revised uncompensated-care annual maximum payment amount for each eligible physician group practice and hospital based on the IGT commitments identified for such payments in subparagraph (A) of this paragraph.

(C) Sum the revised uncompensated-care annual maximum payment amounts for all eligible physician group practices and hospitals with the maximum payment amounts for all eligible governmental ambulance providers and eligible publicly owned dental providers.

(i) If the sum from this subparagraph is equal to or less than the demonstration year annual aggregate amount approved by CMS, HHSC will assign each provider its revised payment amount;

(ii) If the sum from this subparagraph is greater than the aggregate amount approved by CMS, HHSC will proportionately reduce each revised physician group practice annual payment amount and revised hospital annual payment amount to stay within the aggregate limit.

(D) Once reductions to stay within aggregate limits are calculated, HHSC will not re-calculate the resulting payments for any provider during the demonstration year, including if the IGT commitments upon which the reduction calculations were based are different than actual IGT amounts.

(5) Prohibition on duplication of costs. Eligible uncompensated-care costs cannot be reported on multiple uncompensated-care applications, including uncompensated-care applications for other programs. Reporting on multiple uncompensated-care applications is duplication of costs.

(h) [(i)] Delivery System Reform Incentive Payment (DSRIP) maximum payment amounts. The approved RHP plan establishes the payment amount associated with a particular project or quality measure. DSRIP payments cannot exceed the amount reported in the RHP plan.

(i) [(j)] Payment methodology.

(1) Prior to making any category of payment described in subsection [~~subsections~~] (g) or[~~,~~] (h)[~~, and (i)~~] of this section, HHSC will give notice of the following information: [~~calculate for each physician group practice~~]

(A) the maximum payment amount or revised maximum payment amount for that category of payment for the applicable payment period; and[~~.~~]

(B) [~~(2)~~] [~~HHSC will give notice of~~] the maximum intergovernmental transfer amount necessary for a physician group practice to receive the amount described in subparagraph (A) of this paragraph and the deadline for completing the transfer of funds.

(2) [~~(3)~~] The amount of the payment to the physician group practice under paragraph (1) of this subsection will be determined based on the amount of funds transferred by the affiliated governmental entity or entities as described as follows [~~below~~]:

(A) If a governmental entity transfers the maximum amount of funds described in paragraph (1)(B) [~~(2)~~] of this subsection, the physician group practice will receive the maximum allowable payment amount for that period.

(B) If a governmental entity does not transfer the maximum amount referenced in paragraph (1)(B) of this subsection, HHSC will determine the payment amount to each physician group practice owned by or affiliated with that governmental entity as follows:

(i) For uncompensated-care payments described in subsection [~~subsections~~] (g) [~~and (h)~~] of this section, at the time the transfer is made, the governmental entity may notify HHSC, on a form prescribed by HHSC, of the share of the intergovernmental transfer to be allocated to each physician group practice owned by or affiliated with that entity; or

(ii) For DSRIP payments described in subsection (h) [~~(i)~~] of this section, or in the absence of the notification described in clause (i) of this subparagraph for uncompensated-care payments described in subsection [~~subsections~~] (g) [~~and (h)~~] of this section, each physician group practice owned by or affiliated with the governmental entity will receive a portion of its maximum payment amount for that period, based on the physician group practice's percentage of the total maximum payment amounts for all physician group practices owned by or affiliated with that governmental entity.

(j) [~~(k)~~] Reconciliation. Beginning in the third year of the waiver, data on the uncompensated-care application will be used to reconcile actual costs incurred by the physician group practice for a prior period with uncompensated-care payments, if any, made to the hospital for [~~during~~] the same period.

(1) If a physician group practice received payments in excess of its actual costs, the overpaid amount will be recouped from the physician group practice, as described in subsection (k) [~~(l)~~] of this section.

(2) If a physician group practice received payments less than its actual costs, and if HHSC has available waiver funding for the period in which the costs were accrued, the physician group practice may receive reimbursement for some or all of those actual documented unreimbursed costs.

(3) Transition payments are not subject to reconciliation under this subsection.

(k) [~~(l)~~] Recoupment.

(1) In the event of a disallowance by CMS of federal financial participation related to a physician group practice's receipt or use of payments under this section, HHSC may recoup an amount equivalent to the amount of the overpayment or disallowance. The non-federal share of any funds recouped from the physician group practice will be returned to the entity that owns or is affiliated with the physician group practice.

(2) Payments under this section may be subject to adjustment for payments made in error, including, without limitation, adjustments under §371.1711 of this title (relating to Recoupment of Overpayments and Debts) [~~§371.1703 of this title (relating to Recovery of Overpayments~~]), 42 CFR Part 455, and Chapter 403, Texas Government Code. HHSC may recoup an amount equivalent to any such adjustment.

(3) HHSC may recoup from any current or future Medicaid payments as follows:

(A) HHSC will recoup from the physician group practice against which any disallowance was directed or to which an overpayment was made.

(B) If, within 30 days of the physician group practice's receipt of HHSC's written notice of recoupment, the physician group practice has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all future Medicaid payments from the physician group practice until HHSC has recovered an amount equal to the amount overpaid or disallowed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 28, 2013.

TRD-201300303
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 12. WEIGHTS AND MEASURES

SUBCHAPTER B. DEVICES

4 TAC §12.12

The Texas Department of Agriculture (the department) proposes amendments to §12.12, concerning the fees for commercial weighing and measuring devices. The amendments are necessary to comply with changes made to the weights and measures program by the 82nd Texas Legislature, which required that all of the costs of administering this program be entirely offset by revenue generated from the program. The department has conducted a cost recovery analysis and has determined that through continued cost cutting measures, reorganization of the department, and fiscal responsibility, the department has been able to reduce expenditures during fiscal year 2013 below the amount appropriated for Weights and Measures licensing, inspection and enforcement. The amendments to §12.12 de-

crease fees for weighing and measuring devices by an average of twenty percent.

The amendments to §12.12 decrease fees for a liquid measuring device with a maximum flow rate of 20 gallons per minute or less and dispensing one product per nozzle from $9 to $7.20; for a liquid measuring device with a maximum flow rate of 20 gallons per minute or less and dispensing multiple products per nozzle from $26.50 to $21.20; for liquid bulk measuring device from $45 to $36; for LPG $40 to $32; for scales with a capacity less than 5,000 pounds from $20 to $16; for ranch scales from $20 to $16; for non-ranch, non-truck, and non-livestock scales with a capacity of 5,000 pounds or greater from $150 to $120; and for truck scales and livestock scales with a capacity of 5,000 pounds or greater from $215 to $172.

Andria Perales, coordinator for weights and measures, has determined that for the first five-year period the proposed amendments are in effect, there will be fiscal implications for state government due to the decrease in fees collected. There will be an estimated decrease in state revenue of $1,008,388 annually. There is no anticipated fiscal impact for local governments as a result of administering or enforcing the rule amendments, as proposed.

Ms. Perales has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated will be lower cost necessary to administer the department's Weights and Measures program. There is no anticipated additional cost to microbusinesses, small businesses, or persons required to comply with the proposed amendments. There will be a decrease in fees paid by microbusinesses, small businesses and persons required to comply with the proposal.

Comments on the proposal may be submitted to Andria Perales, Coordinator for Weights and Measures, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication on the proposal in the *Texas Register.*

The amendments to §12.12 are proposed under Texas Agriculture Code (the Code), §13.002, which provides the Texas Department of Agriculture (the department) with the authority to enforce the provisions of the Code, Chapter 13, concerning weights and measures; the Code, §13.1011, which provides the department with the authority to adopt rules establishing a system of annual registration under Chapter 13; §13.1151, which provides the department with the authority to set and charge a registration fee for registration of a pump, scale, or bulk or liquefied petroleum gas metering device registered under the Code, §13.101; and the Code, §12.016, which provides the department with the authority to adopt rules necessary for administration of the Code.

The code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 13.

§12.12. Fee Schedule for Commercial Weighing and Measuring Devices and Consumer Information Stickers.

(a) Devices. For the following device types, the registration or registration renewal fee for each such device is:

(1) Liquid measuring device with a maximum flow rate of 20 gallons per minute or less and dispensing one product per nozzle: $7.20 [~~$9~~].

(2) Liquid measuring device with a maximum flow rate of 20 gallons per minute or less and dispensing multiple products per nozzle: $21.20 [~~$26.50~~].

(3) Liquid bulk measuring device [~~with a maximum flow rate greater than 20 gallons per minute~~]: $36 [~~$45~~].

(4) LPG meter: $32 [~~$40~~].

(5) Scale with a capacity less than 5,000 pounds: $16 [~~$20~~].

(6) Ranch Scales: $16 [~~$20~~].

(7) Non-Ranch, Non-Truck, and Non-Livestock Scales with a capacity of 5,000 pounds or greater: $120 [~~$150~~].

(8) Truck Scales and Livestock Scales with a capacity of 5,000 pounds or greater: $172 [~~$215~~].

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2013.

TRD-201300240
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 463-4075

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.5

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 1, §1.5, concerning Previous Participation Reviews. The purpose of the proposed amendments is to appropriately address the process of Previous Participation Reviews for formula allocated funds.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be compliant participants in Department programs and consistency with federal processes. There will not be any economic cost to any individuals required to comply with the amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses as a result of the amendments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held February 8, 2013, to March 8, 2013, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. MARCH 8, 2013.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

§1.5. Previous Participation Reviews.

(a) Purpose and Overview. The Texas Department of Housing and Community Affairs (the "Department") intends to administer programs with compliant partners. Development owners, sub-recipients, non-profit, and for-profit organizations who have previously received Department funding and failed to comply with state, federal, and/or program rules may be excluded from participation.

(b) Definitions. Capitalized terms are defined in Chapter 10, Subchapter A, §10.3 of this title (relating to Definitions). Any capitalized terms not specifically defined in §10.3 of this title, shall have the meaning as defined in Texas Government Code, Chapter 2306, §42 of the Internal Revenue Code (the "Code"), 24 CFR Part 92 (HOME Final Rule), and other Department rules as applicable.

(c) Applicability. A review of a person's [~~applicants'~~] previous participation in all Department programs will be conducted prior to:

(1) providing [~~awarding~~] any Department funding, with the exception of individuals awarded funds through Household Commitment Contracts and Participating Lenders in the Department's Texas Homeownership Division Programs;

(2) approving an ownership transfer request of a Development monitored by the Department;

(3) executing a Carryover Allocation;

(4) modifying a Loan;

(5) modifying a contract that results in additional funding;

(6) closing a loan or executing a contract if more than one-hundred-twenty (120) days have elapsed from the date of Board approval;

(7) processing a request for a Qualified Contract; or

(8) approving an Entity as a Reservation System Participant.

(d) Scope. During the previous participation review, it will be determined if the requesting entity or any person controlling the requesting entity:

(1) owes the Department any fees;

(2) is sixty (60) days or more delinquent on a loan payment;

(3) has failed to provide proof of taxes paid or insurance as required by a Deed of Trust;

(4) has a past due single audit or single audit certification form;

(5) has any unresolved monitoring findings and/or disallowed expenditures identified by the Contract Monitoring or Community Affairs Monitoring sections of the Compliance Division;

(6) is on cost reimbursement with a Community Affairs program;

(7) is on the Department's or any federal agency's debarred, suspended or excluded list;

(8) controls a Development monitored by the Department that is in Material Noncompliance;

(9) controls a HOME Development with any uncorrected issue of noncompliance required by the HOME Final Rule (even if the property is not in Material Noncompliance);

(10) controls an NSP Development with any uncorrected issue of noncompliance required by FR-5447-N-01, October 19, 2010, as amended or FR-5660-N-01, November 27, 2012, as amended (even if the property is not in Material Noncompliance); or

(11) has a Department contract that is suspended at the time of the Previous Participation review.

(e) Issues identified during review. If any of the criteria listed in subsection (d) of this section are met, the entity [~~requesting assistance~~] will be notified of the issue and provided five (5) business days to submit all necessary corrective action to resolve the issue(s). The notification will be in writing and may be delivered by email. For rental Developments in Material Noncompliance, the effective score will be at the end of the five (5) business days. If the [~~requesting~~] entity does not resolve the issue(s), the application or request [~~for assistance~~] will be terminated. In the event that the review is being conducted for a non-competitive funding source where there is no application or request to terminate, staff will prepare a report to the Board identifying the entity and the issue as provided in subsection (j) of this section. If the request [~~for assistance~~] is terminated, the Board has the ability to reinstate the request for assistance for consideration as provided in subsections (k) and (l) [~~(j) and (k)~~] of this section.

(f) Timing. Previous participation reviews may be conducted prior to the Board meeting when funds will be awarded. If the previous participation review cannot be completed prior to the Board meeting when funds will be awarded, the award will be contingent upon the requesting entity successfully clearing the previous participation review. If the action is not subject to Board approval, the previous participation review will be conducted prior to the Department executing an agreement for assistance.

(g) Exceptions:

(1) the previous participation of an individual elected official affiliated with an application or request from a city, county, or local government will not be considered provided that they are not the contract executor;

(2) in general, the previous participation of a member of a nonprofit Board will not be considered unless they are the Executive Director, Chair of the Audit Committee, Board Chair, or any member of the Executive Committee. However, if it is determined that any member of the Board of the Nonprofit is on the Department's or federal agency's debarred list, the request for assistance will be terminated. If within the five (5) business day period referenced in subsection (e) of this section, the party with noncompliance resigns from the Board of the nonprofit, the noncompliance will not be taken into consideration;

(3) the Department will not take into consideration the score of a Development that the requesting entity has not controlled for at least three (3) years;

(4) the Department will not take into consideration the score of a Development for which the Affordability Period ended over three (3) years ago;

(5) the Department will not take into consideration the points associated with events of noncompliance during the period of time that the requesting entity did not control the Development;

(6) the Department will not take into consideration the score attributed to a Development for noncompliance with the CDBG Disaster Recovery Program or the FDIC's Affordable Housing Disposition Program;

(7) if a requesting entity no longer controls a Development but has controlled the Development at any time in the last three (3) years, the Department will determine the score for the noncompliance events with a date of noncompliance identified during the time the requesting entity controlled the Development. If the points associated with the noncompliance events identified during the requesting entity's control of the Development exceed the threshold for Material Noncompliance, the request for assistance will be terminated but may be subject to reinstatement by the Board as provided in subsections (k) and (l) [~~(j) and (k)~~] of this section; or

(8) Work Out Developments. The fees, loan payments or events of noncompliance affiliated with a work out development may or may not be taken into consideration. *Example:* a Work-Out Development is more than sixty (60) days delinquent on loan payments. If the entity and Department staff are actively working to modify and restructure the loan and have entered into a written agreement to modify the loan this would enable the Development to come into compliance.

(h) Partial Previous Participation reviews:

(1) a full previous participation review will not be conducted at the time an owner requests IRS Form 8609. However, HTC Developments with any uncorrected issues of noncompliance or with pending notices of noncompliance will not be issued Form 8609s, Low Income Housing Credit Allocation Certifications, until all events of noncompliance are corrected;

(2) a full previous participation review will not be conducted prior to a Land Use Restriction Agreement (LURA) amendment. However, LURAs will not be amended if the subject Development has any uncorrected issues of noncompliance (other than a provision being amended) or owes fees. No previous participation review will be conducted to amend a technical error to a LURA or other use agreement; and

(3) a full previous participation review will not be conducted prior to a contract extension. However, contract extension requests may be denied if there are uncorrected issues of noncompliance with the subject contract or if a response to a department notification is pending.

(i) Previous participation review for ownership transfers. Consistent with this section, the Department will perform a previous participation review prior to approving any transfer of ownership of a Development or any change in the Owner of a Development. The previous participation review shall be conducted with respect to the Developments controlled by the person coming into ownership, not with respect to the Development or Owner being transferred. If the property being transferred has any uncorrected issues of noncompliance or is in the corrective action period, the proposed incoming owner must provide a corrective action plan identifying dates of correction for any outstanding issues. The Department may deny the transfer of ownership based on financial capacity or lack of adequate relevant experience. The Department may require incoming owners to attend program training.

(j) Previous participation review for noncompetitive funding. Consistent with this section, the Department will perform a previous participation review prior to providing any Department funding. However, certain funds administered by the Department are provided through a noncompetitive formula allocation where there is no application or request to terminate as referenced in subsection (e) of this section. In that event, if the person does not correct the issues identified during the five (5) day period referenced in subsection (e) of this section, staff will prepare a report to the Board identifying the person and the issue(s) that have been identified. After reviewing the report, the Board may, within federal or state program guidelines and any requirements of due process, proceed with providing the funding with or without conditions, direct the staff to initiate defunding the agency, direct staff to procure an alternative provider of the services or take other such actions as it deems appropriate.

(k) [~~(j)~~] Temporary Suspension of Previous Participation reviews. An entity whose request for assistance is terminated may request reinstatement. This process is separate and distinct from the waiver and appeals processes outlined in Chapter 10 of this title (relating to Uniform Multifamily Rules). The request must be in writing and must be submitted to the Department within five (5) business days of the date of the Department's letter notifying the requesting entity of the termination/denial. A timely filed request for reinstatement shall be placed on the agenda for the next Board meeting for which it can be properly posted.

(l) [~~(k)~~] If an Application for assistance was terminated, the Board may consider reinstatement of the application only in the event that it determines, after consideration of the relevant, material facts and circumstances that:

(1) it is in the best interests of the Department and the state to proceed with the award;

(2) the award will not present undue increased program or financial risk to the Department or state;

(3) the applicant is not acting in bad faith; and

(4) the applicant has taken reasonable measures within its power to remedy the cause for the termination.

(m) [~~(l)~~] Reinstatement of a terminated Application or request for assistance merely makes the Application eligible to be considered and does not, in and of itself, constitute approval.

(n) [~~(m)~~] A request for assistance properly terminated because the requesting entity or any person controlling the requesting entity is on the Department's or a federal agency's debarred list cannot be reinstated for consideration. The request for assistance can be re-submitted, if the person or entity that is on the debarred list is no longer part of the requesting entity.

(o) [~~(n)~~] The Board may provide a suspension of previous participation reviews for a single award or action or at their discretion for set period of time. In the event that the Board chooses to suspend previous participation reviews for a set period of time, the conditions existing at the time the reviews were suspended will not be taken into consideration. However, if there are any new events of noncompliance or any new issues described in this subsection (d) of this section, the matter will be brought back to the Board for consideration.

(p) [~~(o)~~] An entity may not request a suspension of previous participation reviews prior to applying for funding or requesting assistance.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2013.

TRD-201300241
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 475-3916

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CHAPTER 25. COLONIA SELF-HELP CENTER PROGRAM RULE

10 TAC §25.5

The Texas Department of Housing and Community Affairs (the "Department") proposes an amendment to 10 TAC Chapter 25, §25.5, concerning the Colonia Self-Help Center Program Rule. The proposed amendment corrects a cross-reference in §25.5 to correctly reference §25.9.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendment will be in effect, enforcing or administering the amended rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendment will be in effect, the public benefit anticipated as a result of the amended rule is to ensure clarity concerning program requirements and provide accurate cross-references. There will be no economic cost to any individuals required to comply with the amendment.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held February 8, 2013, to March 1, 2013, to receive input on the amendment. Written comments may be submitted to Texas Department of Housing and Community Affairs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to Dee Copeland Patience at the following address: dee.patience@tdhca.state.tx.us, or by fax to (512) 475-1162. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. MARCH 1, 2013.

STATUTORY AUTHORITY. The amendment is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the amendment is proposed pursuant to Texas Government Code, Chapter 2306, Subchapter Z, which specifically authorizes the Department to administer the Colonia Self-Help Center Program.

The proposed amendment affects no other code, article, or statute.

§25.5. Allocation and the Colonia Self-Help Center Application Requirements.

(a) The Department distributes Colonia Self-Help Center funds to Unit of General Local Governments (UGLGs) from the 2.5 percent set-aside of the annual Community Development Block Grant (CDBG) allocation to the state of Texas.

(b) The Department shall allocate no more than $1 million per Colonia Self-Help Center award except as provided by this chapter. If there are insufficient funds available from any specific program year to fully fund an Application, the awarded Contract Administrator may accept the amount available at that time and wait for the remaining funds to be committed upon the Department's receipt of the CDBG set-aside allocation from the next program year.

(c) With a baseline award beginning at $500,000, the Department will add an additional $100,000 for each expenditure threshold, as defined in §25.9 [~~§25.8~~] of this chapter (relating to Expenditure Thresholds and Closeout Requirements [~~Administrative Thresholds~~]), met on the current Colonia Self-Help Center Contract, and an additional $100,000 for an accepted Application submitted by the deadline. If a Contract Administrator can demonstrate that any violation of an Expenditure Threshold was beyond the control of the Contract Administrator, it may request of the Board that an individual violation be waived for the purpose of future funding. The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the expenditure threshold requirements if the Board finds the waiver is appropriate to fulfill the purposes or policies of the Texas Government Code, or for other good cause as determined by the Board.

(d) The Contract Administrator shall submit its Application no later than three (3) months before the expiration of its current Contract, or when 90 percent of the funds under the current Contract have been expended, whichever comes first. If this requirement is not met, the Department will apply the options outlined in subsection (c) of this section which will result in lost and delayed funding.

(e) Application reviews are conducted on a first-come first-served basis until all Self-Help Center funds for the current program year and deobligated Self-Help Center funds are committed. Each complete Application will be assigned a "received date" based on the date and time it is received by the Department.

(f) In order to be accepted, each Application must include:

(1) evidence of the submission of the Contract Administrator's current annual single audit;

(2) a Colonia Identification form for each colonia to be served, including all required back-up documentation as identified on the form, executed by the county judge;

(3) a boundary map for each of the five colonias;

(4) a description of the method of implementation. For each colonia to be served by the Colonia Self-Help Center, the Contract Administrator shall describe the services and activities to be delivered. The Application must identify:

(A) the percentage (15 percent minimum) and scope of work that will be performed using self-help methodologies;

(B) the estimated percentage or services that will be contracted to the Colonia Self-Help Center Provider; and

(C) the activities that the Contract Administrator will be administering;

(5) the proposed performance statement. The Contract Administrator must include the number of colonia residents to be assisted from each activity, the activities to be performed (including all sub-activities under each budget line item), and corresponding budget;

(6) the proposed Contract Budget must address:

(A) the Administration line item may not exceed 15 percent of the total budget;

(B) the Public Service line item may not exceed 7.5 percent of the total budget;

(C) the Application must identify at least 15 percent of the budget that will be allocated for direct Self-Help activities;

(D) the amount of leveraged funding, if applicable; and

(E) Direct Delivery Costs for all contractual activities, exclusive of Rehabilitation, cannot exceed 10 percent of each budget line item. Direct Delivery Costs for Rehabilitating are limited to 15 percent of each budget line item;

(7) proposed housing guidelines (includes small repair, Rehabilitation, Reconstruction, New Construction and all other housing activities);

(8) evidence of model subdivision rules adopted by the Contract Administrator;

(9) written policies and procedures, as applicable, for:

(A) solid waste removal;

(B) construction skill classes;

(C) homeownership classes;

(D) technology access;

(E) homeownership assistance; and/or

(F) tool lending library. All Colonia Self-Help Centers are required to operate a tool lending library;

(10) authorized signatory form and direct deposit authorization;

(11) UGLG resolution authorizing the submission of the Application and appointing the primary signator for all Contract documents;

(12) acquisition report (even if there is no acquisition activity);

(13) certification of exemption for HUD funded projects; and

(14) initial disclosure report.

(g) Upon receipt of the Application, the Department will perform an initial review to determine whether the Application is complete and that each activity meets a national objective as required by §104(b)(3) of the Housing and Community Development Act of 1974 (42 U.S.C. §5304(b)(3)).

(h) The Department may reduce the funding amount requested in the Application in accordance to subsection (c) of this section. Should this occur, the Department shall notify the appropriate Contract Administrator before the Application is submitted to C-RAC for review, comments and approval. The Department and the Contract Administrator will work together to jointly agree on the performance measures and proposed funding amounts for each activity.

(i) The Department shall execute a four (4) year Contract with Contract Administrator. No Contract extensions will be allowed. If the Contract Administrator requirements are completed prior to the end of the four (4) year contract period, the Contract Administrator may submit a new Application.

(j) The Department may decline to fund any Application if the activities do not, in the Department's sole determination, represent a prudent use of Colonia Self-Help Center funds. The Department is not obligated to proceed with any action pertaining to any Application which is received, and may decide it is in the Department's best interest to refrain from pursuing any selection process.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 22, 2013.

TRD-201300213
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 475-3916

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CHAPTER 60. COMPLIANCE ADMINISTRATION

SUBCHAPTER B. ACCESSIBILITY REQUIREMENTS

10 TAC §60.209

The Texas Department of Housing and Community Affairs (the "Department") proposes an amendment to 10 TAC Chapter 60, §60.209, concerning Reasonable Accommodations. The proposed amendment removes subsection (h) from this section to ensure consistency with the requirements of Texas Government Code, §2306.6725.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendment is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of the amendment will be improved compliance and clarity regarding requirements. There will not be any additional economic cost to any individuals required to comply with the amendment.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held February 8, 2013, to March 8, 2013, to receive input on the amendment. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. MARCH 8, 2013.

STATUTORY AUTHORITY. The amendment is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendment affects no other code, article, or statute.

§60.209. Reasonable Accommodations.

(a) A reasonable accommodation is an alteration, change, exception, or adjustment to a program, service, building, dwelling unit, or workplace that will allow a qualified person with a disability to:

(1) Participate fully in a program;

(2) Take advantage of a service;

(3) Live in a dwelling; or

(4) Use and enjoy a dwelling.

(b) To show that a requested accommodation may be necessary, there must be an identifiable relationship between the requested accommodation and the individual's disability.

(c) When a resident or applicant requires an accessible unit, feature, space or element, or a policy modification, or other reasonable accommodation to accommodate a disability, the recipient must provide and pay for the requested accommodation, unless doing so would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden. A fundamental alteration is a modification that is so significant that it alters the essential nature of the provider's operations.

(d) If a particular accommodation would result in an undue financial and administrative burden or fundamentally alter the program, the recipient must explore whether other accommodations, although not requested, can meet the needs of the person with a disability.

(e) A recipient may not charge a fee or place conditions on a resident or applicant in exchange for making the accommodation.

(f) A reasonable accommodation that amounts to an alteration should be made to meet the needs of the individual with a disability, rather than any particular minimum code specification.

(g) If a recipient refuses to provide a requested accommodation because it is either an undue financial and administrative burden or would result in a fundamental alteration to the nature of the program, the recipient shall engage in an interactive dialogue with the requester to determine if there is an alternative accommodation that would adequately address the requester's disability-related needs. If an alternative accommodation would meet the individual's needs and is reasonable, the recipient must provide it. *(Source: HUD Handbook 4350.3, §2-39, §2-40, 24 CFR §8.33, Secretary v. Country Manor, HUDALJ 05-98-1469-8 (September 20, 2001))*

(1) EXAMPLE 209(1): A resident requires an accessible parking space that will accommodate her wheelchair-equipped van. A reasonable accommodation includes relocating and enlarging an existing parking space that will serve the van.

(2) EXAMPLE 209(2): A project has five parking spaces located outside the main entrance to the building and another parking lot with 20 spaces a half block away. All five of the parking spaces near the entrance to the building have been assigned to residents with disabilities who need a parking space near their door because of their disabilities. A sixth tenant with difficulty in walking long distances moves into the project and requests a parking space near his door. The recipient has explored the options and concluded that the only way to provide more parking spaces near the door would be to widen the parking area by purchasing valuable real estate next door. It would be an undue financial and administrative burden for the recipient to provide the sixth tenant with a parking space near the entrance. An alternative accommodation could be to provide the sixth tenant with an assigned parking space in the lot half block away until such time as one of the five spaces near the door becomes available.

(3) EXAMPLE 209(3): A resident needs grab bars at the toilet in her bathroom. She does not require other accessible features. The recipient must install grab bars consistent with the resident's needs in the bathroom.

(4) EXAMPLE 209(4): A resident needs a ramped entrance to her ground floor unit to accommodate her wheelchair. She does not wish to move to an accessible unit. The recipient must provide an accessible entrance at the resident's current unit, unless it would be an undue financial and administrative hardship or a fundamental alteration of the program to do so.

(5) EXAMPLE 209(5): A resident uses a scooter type wheelchair which is 38 inches in width. She requests a ramp to enter her ground floor unit. The ramp which she requests must be at least 40 inches wide, it must have a slope of no more than 3%, and the landing at the front door, which opens outward, must be enlarged to provide adequate maneuvering space to enter the doorway. The changes must be provided, even though they may exceed the usual specifications for such alterations.

(6) EXAMPLE 209(6): A resident with quadriplegia requests replacement of a bathtub in his unit with a roll-in shower. Due to the location of existing plumbing in the building and the size of the existing bathroom, a plumber confirms that installation of a roll-in shower in that unit is impossible. The on-site manager meets with the resident to explain why the roll-in shower cannot be installed and to explore alternative accommodations with the resident.

~~[(h) Housing Tax credit Properties that are not layered with additional federal funds are not subject to any provision identified in this section.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2013.

TRD-201300242
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 475-3916

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 17. RESOURCE PLANNING

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §17.3

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §17.3, concerning resource planning definitions. Specifically, these amendments will make necessary changes to existing definitions in order to define planned projects when considering project applications.

Ms. Susan Brown, Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering this change to the rules.

Ms. Brown has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be more effective administration of the capital project approval process. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to Gary Johnstone, Deputy Assistant Commissioner for Planning and Accountability, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, TX 78752 or gary.johnstone@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §§61.0572, 61.058, and 61.0582.

The amendments affect Texas Education Code, §§61.0572, 61.058, and 61.0582.

§17.3. Definitions.

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (56) (No change.)

(57) Planned Project--A project submitted to the Board for review and approval if the project is reported on the most recently submitted MP1 report and prioritized in the top ten projects submitted by the institution, approved by the Board as supporting the state's higher education needs, the scope of the project is within 10% of the scope as identified in the capital expenditure plan, the cost of the project is within 10% of the project costs identified in the capital expenditure plan, and funding sources are appropriate with the type of project presented.

(58) [~~(57)~~] Project--The process that includes the construction, repair, renovation, addition, alteration of a campus, building, or facility, or its infrastructure, or the acquisition of real property.

(59) [~~(58)~~] Real Property--Land with or without improvements such as buildings.

(60) [~~(59)~~] Repair and Renovation (R&R)--Construction upgrades to an existing building, facility, or infrastructure that currently exists on campus; this includes the finish-out of shell space. R&R may add E&G NASF space.

(61) [~~(60)~~] Research Facility--A facility used primarily for experimentation, investigation, or training in research methods, professional research and observation, or a structured creative activity within a specific program. Included are laboratories used for experiments or testing in support of instructional, research, or public service activities.

(62) [~~(61)~~] Shell Space--An area within a building with an unfinished interior designed to be converted into usable space at a later date.

(63) [~~(62)~~] Space Need--The result of the comparison of an institution's actual space to the predicted need as calculated by the Board's Space Projection Model.

(64) [~~(63)~~] Standard--Basis, criteria, or benchmark used for evaluating the merits of a project request or an institutional comparison to a benchmark.

(65) [~~(64)~~] Technical Research Building--Space used for research, testing, and training in a mechanical or scientific field. Special equipment is required for staff and/or student experimentation or observation. Included are specialized laboratories for new technologies that have stringent environmental controls on air quality, temperature, vibration, and humidity. Facilities generally include space for specialized technologies, semiconductors, biotechnology, advanced materials, quantum computing and advanced manufacturing quantum computing technology, nanoscale measurement tools, integrated microchip-level technologies for measuring individual biological molecules, and experiments in nanoscale disciplines.

(66) [~~(65)~~] Tracking Report--Institutional reports indicating the status of approved projects.

(67) [~~(66)~~] Tuition Revenue Bonds Project--A project for which an institution has legislative authority to finance a construction or land acquisition project as provided for in Texas Education Code, §§55.01 - 55.25.

(68) [~~(67)~~] Unimproved Real Property--Real property on which there are no buildings or facilities.

(69) [~~(68)~~] University System--The association of one or more public senior colleges or universities, medical or dental units, or other agencies of higher education under the policy direction of a single governing board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 28, 2013.

TRD-201300299
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 25, 2013
For further information, please call: (512) 427-6114

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SUBCHAPTER B. BOARD APPROVAL

19 TAC §17.12

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §17.12, concerning delegation of approval authority for capital projects. Specifically, these amendments will make necessary changes to existing delegation authority to facilitate changes to project standards.

Ms. Susan Brown, Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering this change to the rules.

Ms. Brown has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be more efficient and effective administration of the capital project approval process. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Gary Johnstone, Deputy Assistant Commissioner for Planning and Accountability, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, TX 78752 or gary.john-

stone@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §§61.0572, 61.058, and 61.0582.

The amendments affect Texas Education Code, §§61.0572, 61.058, and 61.0582.

§17.12. Delegation of Approval Authority.

(a) Commissioner. The Board authorizes the Commissioner, and the Deputy Commissioner for Academic Planning and Policy when acting on behalf of the Commissioner, to review or approve the following types of projects upon certification of authority by the proposing institution's governing board that the project meets all of the specified Board standards for that project type.

(1) - (9) (No change.)

(10) Emergency requests eligible for Commissioner approval under the provisions of §17.22 of this title (relating to Emergency Approval of Projects); [~~and~~]

(11) Projects not meeting the criteria of §17.3(57) of this title (relating to Definitions, planned project), that are otherwise eligible for Commissioner level approval; and

(12) [~~(11)~~] Any project referred to the Commissioner by the Assistant Commissioner.

(b) Assistant Commissioner. The Board authorizes the Assistant Commissioner and the Deputy Assistant Commissioner for Planning and Accountability when acting on behalf of the Assistant Commissioner, to approve the following types of projects, upon certification of authority by the proposing institution's governing board that the project meets all of the specified Board standards for that project type:

(1) - (7) (No change.)

(8) Projects previously reviewed or approved by the Board, Committee, Commissioner, Deputy Commissioner for Academic Planning and Policy, or Assistant Commissioner that require reconsideration under the provisions of §17.14 of this title (relating to Re-approval of Projects) relating to any change in the funding source of an approved project with a total projected cost less than $25 million; [~~and~~]

(9) New construction, major repair and renovation, or property acquisition that affects only the University System, and not a member institution, and has a total projected cost less than $15 million; and[~~.~~]

(10) Projects not meeting the criteria of §17.3(57) of this title, that are otherwise eligible for Assistant Commissioner level approval.

(c) Committee on Affordability, Accountability and [~~Strategic~~] Planning. The Board authorizes the Committee to approve the following types of projects, upon certification of authority by the proposing institution's governing board:

(1) - (9) (No change.)

(10) Any project referred to the Committee by the Commissioner or the Assistant Commissioner; [~~and~~]

(11) Any project requiring a third re-approval under the provisions of §17.14 of this title (relating to Re-approval of Projects); and[~~.~~]

(12) Projects not meeting the criteria of §17.3(57) of this title, that are otherwise eligible for Committee on Affordability, Accountability and Planning level approval.

(d) - (e) (No change.)

(f) Decisions of the Committee [~~on Strategic Planning~~] are final. Decisions of the Commissioner may be appealed to the Board.

(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 28, 2013.

TRD-201300300
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 25, 2013
For further information, please call: (512) 427-6114

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SUBCHAPTER C. RULES APPLYING TO ALL PROJECTS

19 TAC §17.20

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §17.20, concerning project approval criteria for capital projects. Specifically, these amendments create a standard that mandates all projects be planned to a reasonable level of detail well in advance of application for approval. To be considered a planned project, the project must be prioritized in the top ten projects as submitted in the annual Capital Expenditure Plan, and the scope and cost of the submitted must be within ten percent of the amounts specified in the Capital Expenditure Plan. In the event a project does not meet the planned project criteria, the institution will be required to submit additional information to the appropriate approval level for consideration.

Ms. Susan Brown, Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering this change to the rule.

Ms. Brown has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be more efficient and effective administration of the capital project approval process. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Gary Johnstone, Deputy Assistant Commissioner for Planning and Accountability, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, TX 78752 or gary.johnstone@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §§61.0572, 61.058, and 61.0582.

The amendments affect Texas Education Code, §§61.0572, 61.058, and 61.0582.

§17.20. Criteria for Approval of Projects.

Projects considered for approval shall meet the following criteria:

(1) - (6) (No change.)

(7) If the project includes the acquisition of real property, the acquisition shall be included in the institution's long-range campus master plan or the institution shall certify that the project represents an opportunity or emergency that could not be foreseen.

(8) All projects [~~The project~~] shall be planned projects (as defined in §17.3 of this title (relating to Definitions)) included in the institution's most recently submitted Facilities Development Plan (MP1 report) [~~or the institution shall certify that the project represents an opportunity or emergency that could not be foreseen~~].

(9) - (12) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 28, 2013.

TRD-201300301
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 25, 2013
For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §361.14

The Texas State Board of Plumbing Examiners (Board) proposes new 22 TAC §361.14 (Board Rule §361.14), concerning Petition for Adoption of Rules. The new rule is proposed to replace a similar rule and to position it in proximate numerical sequence with other rules. The new rule is proposed in conjunction with the repeal of 22 TAC §361.21 (Board Rule §361.21). The new rule will replace Board Rule §361.21.

This need was identified during the agency quadrennial rule review.

Lisa Hill, Executive Director of the Board, has determined that for the first five-year period the new rule is in effect, there will be no fiscal impact on state and local governments as a result of the new rule.

Ms. Hill also has determined that for each year of the first five-year period the rule is in effect, there will be no local employment impact as a result of the new rule.

Ms. Hill has concluded that for each year of the first five years the new rule is in effect, the anticipated public benefit will be that the Board's Rules will be more uniform. Ms. Hill has determined that there will be no economic cost to individuals who would otherwise be subject to this rule. Ms. Hill has also determined there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in effect between small and large businesses.

Ms. Hill has determined that the proposal of the new rule is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed new rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and therefore does not constitute a taking under Texas Government Code §2007.043.

The Board invites comments on the proposed new rule from any member of the public. Written comments should be mailed to Lisa Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200; faxed to her attention at (512) 450-0637; or sent by email to info@tsbpe.state.tx.us.

The new Board Rule §361.14 is proposed under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by this proposed section.

§361.14. Petition for Adoption of Rules.

Any person who petitions the board in writing to request the adoption of rules shall:

(1) include a brief statement summarizing the proposed action and detailing its desired effect;

(2) include a full justification of the proposed action in narrative form, citing all pertinent facts and circumstances;

(3) refer to an existing rule under consideration by title and code number and preface the text to indicate words and punctuation to be added, changed, or deleted;

(4) prepare the text of a new rule in the exact form that is desired to be adopted;

(5) include a suggested effective date;

(6) include the petitioner's full name, complete mailing address, and telephone number;

(7) include the signature of the petitioner and of the petitioner's representative, if any; and

(8) file 10 copies (one for the administrator and one for each board member) at least 30 days before the meeting at which the petition is to be considered.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300284
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Proposed date of adoption: April 8, 2013
For further information, please call: (512) 936-5224

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22 TAC §361.15

The Texas State Board of Plumbing Examiners (Board) proposes new 22 TAC §361.15 (Board Rule §361.15), concerning Election of Board Officers. The new rule is proposed to replace a similar rule and to position it in proximate numerical sequence with other rules. The new rule is proposed in conjunction with the repeal of 22 TAC §361.29 (Board Rule §361.29). The new rule will replace Board Rule §361.29.

This need was identified during the agency quadrennial rule review.

Lisa Hill, Executive Director of the Board, has determined that for the first five-year period the new rule is in effect, there will be no fiscal impact on state and local governments as a result of the new rule.

Ms. Hill also has determined that for each year of the first five-year period the rule is in effect, there will be no local employment impact as a result of the new rule.

Ms. Hill has concluded that for each year of the first five years the new rule is in effect, the anticipated public benefit will be that the Board's Rules will be more uniform. Ms. Hill has determined that there will be no economic cost to individuals who would otherwise be subject to this rule. Ms. Hill has also determined there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in effect between small and large businesses.

Ms. Hill has determined that the proposal of the new rule is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed new rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and therefore does not constitute a taking under Texas Government Code §2007.043.

The Board invites comments on the proposed new rule from any member of the public. Written comments should be mailed to Lisa Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200; faxed to her attention at (512) 450-0637; or sent by email to info@tsbpe.state.tx.us.

The new Board Rule §361.15 is proposed under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by this proposed section.

§361.15. Election of Board Officers.

(a) The governor shall designate a member of the board as the presiding officer of the Board to serve in that capacity at the pleasure of the governor.

(b) The Board shall elect a secretary from its membership.

(1) The election may be held every two years during the July Board meeting.

(2) The elected Board Secretary shall take office on the first day of September following the election held at the July Board meeting.

(3) If the office becomes vacant for any reason, a special election shall be held at the next regularly scheduled Board meeting to fill the office for the unexpired term.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300286
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Proposed date of adoption: April 8, 2013
For further information, please call: (512) 936-5224

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SUBCHAPTER B. PETITION FOR ADOPTION OF RULES

22 TAC §361.21

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Plumbing Examiners or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas State Board of Plumbing Examiners (Board) proposes the repeal of 22 TAC §361.21 (Board Rule §361.21), concerning Petition for Adoption of Rules. The repeal is necessary in order to propose a new rule to replace it in proximate numerical sequence with prior rules. The replacement rule will be Board Rule §361.14 and is proposed in conjunction with this repeal.

This repeal was identified and deemed necessary during the agency quadrennial rule review.

Lisa Hill, Executive Director of the Board, has determined that for the first five-year period the repeal is in effect, there will be no fiscal impact on state and local governments as a result of this repeal. Ms. Hill also has determined that at no time will there will be any local employment impact as a result of this repeal.

Ms. Hill has concluded that for each year of the first five years the repeal is in effect, the anticipated public benefit will be that the Board's Rules will be more uniform. Ms. Hill has determined that there will be no economic cost to individuals who would otherwise be subject to the rule or the repeal. Ms. Hill has also determined there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in effect between small and large businesses.

Ms. Hill has determined that this repeal will not affect any "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the rule repeal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and therefore does not constitute a taking under Texas Government Code §2007.043.

The Board invites comments on the proposed repeal of this rule from any member of the public. Written comments should be mailed to Lisa Hill, Executive Director, at P.O. Box 4200, Austin,

Texas 78765-4200; faxed to her attention at (512) 450-0637; or sent by email to info@tsbpe.state.tx.us.

The repeal of Board Rule §361.21 is proposed under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by this repeal.

§361.21. Petition of Adoption of Rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300283
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Proposed date of adoption: April 8, 2013
For further information, please call: (512) 936-5224

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SUBCHAPTER C. ELECTION OF BOARD OFFICERS

22 TAC §361.29

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Plumbing Examiners or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas State Board of Plumbing Examiners (Board) proposes the repeal of 22 TAC §361.29 (Board Rule §361.29), concerning Board Officers. The repeal is necessary in order to propose a new rule to replace it in proximate numerical sequence with prior rules. The replacement rule will be Board Rule §361.15 and is proposed in conjunction with this repeal.

This repeal was identified and deemed necessary during the agency quadrennial rule review.

Lisa Hill, Executive Director of the Board, has determined that for the first five-year period the repeal is in effect, there will be no fiscal impact on state and local governments as a result of this repeal. Ms. Hill also has determined that at no time will there will be any local employment impact as a result of the repeal.

Ms. Hill has concluded that for each year of the first five years the repeal is in effect, the anticipated public benefit will be that the Board's Rules will be more uniform. Ms. Hill has determined that there will be no economic cost to individuals who would otherwise be subject to the rule or the repeal. Ms. Hill has also determined there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in effect between small and large businesses.

Ms. Hill has determined that this repeal will not affect any "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the rule repeal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and therefore does not constitute a taking under Texas Government Code §2007.043.

The Board invites comments on the proposed repeal of this rule from any member of the public. Written comments should be mailed to Lisa Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200; faxed to her attention at (512) 450-0637; or sent by email to info@tsbpe.state.tx.us.

The repeal of Board Rule §361.29 is proposed under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by this repeal.

§361.29. Board Officers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300285
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Proposed date of adoption: April 8, 2013
For further information, please call: (512) 936-5224

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PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.10

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.10, concerning Costs of Administrative Hearings. The Board proposes the amendment to §575.10 to more specifically define the costs that the Board assesses against opposing parties that lose a hearing at the State Office of Administrative Hearings (SOAH) or choose to appeal a SOAH ruling, in order to make the rule conform more closely to §2001.059 of the Administrative Procedure Act, Texas Government Code. While the current rule allows the Board to assess all hearing costs against a party who loses at SOAH, under the proposed amended rule, the Board may assess only transcript costs against the losing party at SOAH or the party that chooses to appeal a SOAH decision, as is explicitly allowed by §2001.059 of the Administrative Procedure Act. The proposed amendment also makes the rule apply to individuals with contested cases before SOAH involving licensure eligibility, as well as those with cases involving disciplinary action, because there is no difference between these types of cases with regard to the cost of creating the transcript of a SOAH hearing or the applicability of §2001.059 of the Administrative Procedure Act.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be a slight potential decrease in revenue to state government as a result of this amendment, but that the decrease is not likely to

be significant, as the Board has historically taken fewer than ten cases per year to SOAH and the hearing transcript costs usually represent the largest expense for the Board involved in SOAH hearings. Ms. Oria does not anticipate any impact on revenue to local government. Ms. Oria has also determined that there will be no increase in costs to either state or local government as a result of enforcing or administering the rule as proposed, and there may be a slight reduction in cost to state government because the proposed rule should be more easily enforceable, removing time and expense that has been spent by the state on defending legal challenges to the current rule. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify for licensees and those seeking licensure the potential costs associated with taking a case to SOAH and with appealing to state district court a board ruling based on a SOAH decision, and to ensure that the cost of creating a transcript for SOAH hearings is shouldered by the losing party who failed to settle prior to hearing or the party who wishes to appeal, rather than by the taxpayers.

Ms. Oria has determined that the cost to persons required to comply with the rule will vary based on the length of the SOAH hearing in question, from no cost for individuals who have a SOAH hearing that lasts less than one day and does not require a transcript under SOAH rules, to approximately $1,000 per hearing day for those whose hearings last more than one day and therefore require a transcript under SOAH rules. The amended rule will create a slight decrease in economic cost to licensees subject to discipline and individuals denied licensure who go to a hearing before SOAH, because those who lose their SOAH hearings or choose to appeal board rulings based on SOAH decisions will no longer be required to pay litigation costs other than transcript costs. Many licensees are solo practitioners, and as such are considered small or micro-businesses, so the slight decrease in economic costs will be a slight decrease in costs for both individuals and small or micro businesses. There is thus no adverse impact expected for small or micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.154(a), which states that the board by rule shall set fees in amounts that are reasonable and necessary so that the fees, in the aggregate, cover the costs of administering this chapter. The amendment is also proposed under the authority of the Administrative Procedure Act, Government Code, §2001.059(b), which states that a state agency may pay the cost of a transcript or may assess the cost to one or more parties.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§575.10. Costs of Administrative Hearings.

(a) Default Orders. In cases brought before SOAH, in the event that the respondent is adjudged to be in violation of the Act by default, the Board [~~board~~] has the authority to assess, in addition to penalty imposed, costs of transcribing the administrative hearing.

(b) Mediation at SOAH. The costs of mediation shall be born equally by the parties, unless proof through affidavit and other reliable records such as tax returns show that a party is incapable of paying part of the costs of mediation.

(c) Trial on the Merits. In cases brought before SOAH, in the event that the respondent is adjudged after a trial on the merits to be either in violation of the Act or ineligible for licensure [~~after a trial on the merits~~], the Board [~~board~~] has the authority to assess, in addition to the penalty imposed, the costs of transcribing the administrative hearing.

(d) Appeal. The costs of transcribing the testimony and preparing the record for an appeal by judicial review shall be paid by the party who appeals.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Loris Jones
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22 TAC §575.20

The Texas Board of Veterinary Medical Examiners (Board) proposes new §575.20, concerning Board Proceedings Relating to Licensure Eligibility.

The Board proposes new §575.20 to provide an informal process to decide licensure eligibility issues. The process parallels the informal process the Board uses to determine disciplinary issues, allowing a subcommittee of the Board to determine whether an applicant is eligible for licensure and to offer agreed licensure orders. If an applicant is determined ineligible for licensure or fails to sign an agreed licensure order offered by the subcommittee, the licensee is scheduled for a hearing before the State Office of Administrative Hearings (SOAH). If the applicant signs an agreed licensure order, the full Board will review it and vote to approve, modify the order, or reject it. If the Board rejects an agreed order, the licensee is scheduled for a hearing before SOAH. If a licensee is denied licensure by a final order of the Board following a SOAH hearing, the proposed new rule states that the licensee may not reapply for licensure for two years from the date of that order.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to state or local government as a result of the new rule. Ms. Oria has also determined that there will be no impact on costs to either state or local government as a re-

sult of enforcing or administering the rule as proposed, because the Board already has the obligation of incurring the costs necessary to take licensure denial cases to SOAH, and neither that obligation or the associated costs are affected by the proposed rule. Ms. Oria has further determined that the new rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify for individuals seeking licensure the process through which the Board will decide whether they are eligible for licensure.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the rule, because potential licensees are not required to attend the informal committee meeting. There is no adverse impact expected for small or micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed new rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.408(a)(1), which states that the Board shall adopt rules setting out the procedures governing the informal disposition of a contested case under §2001.056, Government Code.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§575.20. Board Proceedings Relating to Licensure Eligibility.

(a) Recommendations by the Executive Director.

(1) The executive director may review applications for licensure and determine whether an applicant is eligible for licensure or refer an application to a committee of the Board for review.

(2) To promote the expeditious resolution of any licensure matter, the executive director may recommend that the applicant be eligible for a license, but only under certain terms and conditions, and present a proposed agreed licensure order to the applicant.

(A) If the proposed agreed licensure order or remedial plan is acceptable to the applicant, the applicant shall sign the agreed licensure order and the agreed licensure order shall be presented to the Board for consideration and acceptance without conducting an informal board proceeding relating to licensure eligibility.

(B) If the proposed agreed order is not acceptable to the applicant, the applicant may request review of the executive director's recommendation by a committee of the Board.

(b) Determination by a Committee of the Board. Upon a review of an application for licensure, a committee of the Board may determine that the applicant is ineligible for licensure, or is eligible for licensure with or without restrictions or conditions, or defer its decision pending further information.

(1) Licensure with Terms and Conditions.

(A) If the committee determines that the applicant should be granted a license under certain terms and conditions based on the applicant's commission of a prohibited act or failure to demonstrate compliance with provisions under the Veterinary Licensing Act (Chapter 801, Occupations Code) or board rules, the committee, as the Board's representatives, shall propose an agreed order.

(B) If the applicant agrees to the terms of the agreed order, the proposed agreed order will be presented to the Board for approval at the next board meeting.

(i) The agreed licensure order may be adopted, modified, or rejected by the Board.

(ii) If the Board approves the agreed order with or without amendments, the executive director or their designee shall mail the approved agreed order to the applicant. The applicant shall have fourteen (14) days from receipt to accept the amended agreed order by signing and returning it to the Board. If an applicant does not sign and return an amended agreed order or does not respond within the fourteen (14) days, the applicant shall be considered ineligible for licensure.

(iii) If the Board rejects the agreed order, the applicant may be scheduled for a hearing before an administrative law judge at the SOAH, or the Board may direct the executive director to take other appropriate action.

(C) If the applicant does not agree to the terms of the proposed agreed order, the applicant is considered ineligible for licensure.

(2) Ineligibility Determination.

(A) If an applicant is ineligible for licensure either through a determination by a board committee or through the applicant's failure to accept a proposed agreed order, the applicant will be notified of the determination and scheduled for a hearing before an administrative law judge at the State Office of Administrative Hearings, unless the applicant sends notice in writing to the Board that the applicant accepts the determination of ineligibility or withdraws the application for licensure.

(B) A hearing on an applicant's eligibility for licensure will be conducted in accordance with §575.30 of this chapter (relating to Contested Case Hearing at SOAH), and a final decision of the Board shall be rendered in accordance with §§575.6 - 575.9 of this chapter (relating to Procedures Following a Contested Case Hearing, Presentation of Proposal for Decision, Final Decision and Orders, and Motions for Rehearing).

(C) An applicant whose petition for licensure is denied by a final order of the Board may not file another petition for licensure until after the expiration of two years from the date of the Board's order denying the petition.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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22 TAC §575.28

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.28, concerning Complaints--Investigations.

The Board proposes to amend §575.28 by removing the requirement that the board secretary review disciplinary cases involving medical issues, to allow any veterinarian member of the Board to serve on the committee that reviews the cases involving medical issues. The proposed amendment would allow the Board president more flexibility in making appointments to the reviewing committee by increasing the number of board members eligible to review the medical cases. Medical case review requires a significant time commitment from the veterinarian board members, and the proposed amendment would allow the board president to spread the burden of medical case review more evenly among the veterinarian board members.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to state or local government as a result of this amendment. Ms. Oria has also determined that there will be no impact on costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to ensure that the veterinarian board members assigned to review cases involving medical issues are not overburdened, exhausted or burned out by reviewing too many cases, and therefore are able to provide a detailed review of each case.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the rule, because all veterinarian board members are already required to review medical cases at some point during their tenure on the Board as a part of their board duties. There is no adverse impact expected for small or micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.205, which states that the Board shall adopt rules relating to the investigation of complaints filed with the Board; and §801.408(a), which states that the Board shall adopt rules setting out the procedures governing the informal disposition of a contested case under §2001.056, Texas Government Code, and informal proceedings held in compliance with §2001.054, Texas Government Code.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§575.28. Complaints--Investigations.

Investigation of complaints.

(1) Policy. The policy of the Board is that the investigation of complaints shall be the primary concern of the Board's enforcement program, and shall take precedence over all other elements of the enforcement program, including compliance inspections.

(2) Priority. The Board shall investigate complaints based on the following allegations, in order of priority:

(A) acts or omissions, including those related to substance abuse, that may constitute a continuing and imminent threat to the public welfare;

(B) acts or omissions of a licensee that resulted in the death of an animal;

(C) acts or omissions of a licensee that contributed to or did not correct the illness, injury or suffering of an animal; and

(D) all other acts and omissions that do not fall within subparagraphs (A) - (C) of this paragraph.

(3) Upon receipt of a complaint, a letter of acknowledgment will be promptly mailed to the complainant.

(4) Complaints will be reviewed every thirty (30) days to determine the status of the complaint. Parties to a complaint will be informed on the status of a complaint at approximately 45 day intervals.

(5) Upon receipt of a complaint, the director of enforcement, or their designee, will review it and may interview the complainant to obtain additional information. If the director of enforcement concludes that the complaint resulted from a misunderstanding, is outside the jurisdiction of the Board, or is without merit, the director of enforcement shall recommend through the general counsel to the executive director that an investigation not be initiated. If the executive director concurs with the recommendation, the complainant will be so notified. If the executive director does not concur with the recommendations, an investigation will be initiated.

(6) The director of enforcement will assign a member of board staff to investigate the complaint. A summary of the allegations in the complaint will be sent to the licensee who is the subject of the complaint, along with a request that the licensee respond in writing within 21 days of receipt of the request. The licensee will also be asked to provide a copy of the relevant patient records with the response. The licensee is entitled on request to review the complaint submitted to the Board unless board staff determines that allowing the licensee to review the complaint would jeopardize an active investigation.

(7) After the licensee's response to the complaint is received, board staff shall send a copy of the licensee's response to the complainant, along with notification that the complainant may submit additional comments and other evidence, if any, at any time during the investigation to the Board. Board staff shall provide any response provided by the complainant to the licensee, unless board staff determines that allowing the licensee to review the response from the complainant would jeopardize an active investigation, and provide a single opportunity for the licensee to respond to the Board within ten days of receipt. No further responses from either the licensee or the complainant will be provided to either party.

(8) Further investigation may be necessary to corroborate the information provided by the complainant and the licensee. During the investigation, board staff shall attempt to interview by telephone the complainant, and if unable to contact the complainant shall document such in the file. Other persons, such as second opinion or consulting veterinarians, may be contacted. Board staff may request ad-

ditional medical opinions, supporting documents, and interviews with other witnesses.

(9) Upon the completion of an investigation, board staff shall prepare a report of investigation (ROI) for review by the director of enforcement.

(A) If the director of enforcement determines from the ROI that the probability of a violation involving medical judgment or practice exists, the director of enforcement will forward the ROI to the executive director. If the executive director concurs that the probability of a violation involving medical judgment or practice exists, the director of enforcement shall forward a copy of the ROI and complaint file to two veterinary licensee [~~the board secretary and another~~] board members [~~member~~] ([~~the~~ "]veterinarian members["]) who will determine whether or not the complaint should be closed, further investigation is warranted, or if the licensee and complainant should be invited to respond to the complainant an informal conference at the board offices.

(B) If the director of enforcement determines from the ROI that the probable violation does not involve medical judgment or practice (example: administrative matters such as continuing education and federal and state controlled substances certificates), the director of enforcement shall forward the complaint file to a committee of the executive director, director of enforcement, member of board staff assigned to investigate the complaint, and general counsel (the "staff committee"), which shall determine whether or not the complaint should be dismissed, investigated further, or settled.

(C) If the veterinarian members determine that a violation has not occurred, the executive director or the executive director's designee, shall notify the complainant and licensee in writing of the conclusion and that the complaint is dismissed.

(D) If the veterinarian members conclude that a probable violation(s) exists, the executive director or the executive director's designee, shall invite the licensee and complainant, in writing, to an informal conference to discuss the complaint made against the licensee. If the veterinarian members cannot agree to dismiss or refer the complaint to an informal conference, the complaint will be automatically referred to an informal conference. The letter invitation to the licensee must include a list of the specific allegations of the complaint.

(E) A complaint considered by the staff committee shall be referred to an informal conference if:

(i) the staff committee determines that the complaint should not be dismissed or settled;

(ii) the staff committee is unable to reach an agreed settlement; or

(iii) the licensee who is the subject of the complaint requests that the complaint be referred to an informal conference.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Executive Assistant
Texas Board of Veterinary Medical Examiners
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22 TAC §575.29

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.29, concerning Informal Conferences.

The Board proposes to amend §575.29 to remove the requirement that the board secretary serve on the Enforcement Committee, which reviews disciplinary cases during informal settlement conferences to determine whether a violation of either the Board's rules or the Veterinary Licensing Act has occurred. The proposed amendment allows the board president more flexibility in making appointments to the Enforcement Committee and increases the number of board members eligible to serve on the Enforcement Committee. The veterinarian board members who serve on the Enforcement Committee also review all disciplinary cases that involve issues of medical judgment or practice under §575.28, which sets out the procedures for review of cases involving medical issues that are under investigation by the Board. The proposed amendment to §575.29 makes clear that the veterinarian members of the Enforcement Committee are the same veterinarian board members that perform medical case reviews by including a reference to §575.28.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to state or local government as a result of this amendment. Ms. Oria has also determined that there will be no impact on costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to ensure that the veterinarian board members assigned to the Enforcement Committee do not become exhausted or burned out, and therefore are able to provide a detailed and fair review of each case during informal conferences.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the rule, because all veterinarian board members are already required to serve on the Enforcement Committee at some point during their tenure on the Board as a part of their board duties. There is no adverse impact expected for small or micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.408(a), which states that the Board shall adopt rules setting out the procedures governing the informal disposition of a contested case under §2001.056, Texas Gov-

ernment Code, and informal proceedings held in compliance with §2001.054, Texas Government Code.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§575.29. Informal Conferences.

(a) The informal conference is the last stage in the investigation of a complaint. The licensee has the right to waive his or her attendance at the conference. The licensee may be represented by counsel.

(b) The Board may be represented at the informal conference by an enforcement committee of the executive director, the two veterinarian members and a public member of the Board [~~board~~], the director of enforcement, the member of board staff assigned to investigate the complaint, and the Board's general counsel. The complainant and the licensee and the licensee's legal counsel may attend the conference. Any other attendees are allowed at the discretion of the executive director. The executive director or the director of enforcement shall conduct the conference.

(c) Contingency. The Board president shall appoint a third [~~another~~] veterinary licensee board member to assume the duties of either of the veterinarian members [~~the board secretary~~] in the complaint review and informal conference process in the event either of the veterinarian members [~~the board secretary~~] is unable to serve in the capacity set out in this section and in §575.28 of this title (relating to Complaints--Investigations).

(d) Procedure. Subject to the discretion of the executive director, the following procedure will be followed at the informal conference. The executive director shall explain the purpose of the conference and the rights of the participants, lead the discussion of the allegations of the complaint, and explain the possible courses of action at the conclusion of the conference. The licensee will be asked to respond to the allegations. The complainant will be allowed to make comments relevant to the allegations. Comments of the licensee and complainant must be addressed to the person conducting the conference and not to each other. In the interest of maintaining decorum, the licensee or complainant may be asked to leave the room while the other is talking with the committee. The enforcement committee members may ask questions of the licensee and complainant in order to fully develop the complaint record.

(e) At the conclusion of the informal conference, the enforcement committee shall determine if a violation has occurred. If the enforcement committee determines that a violation has not occurred, the enforcement committee, or their designee, will dismiss the complaint, and will advise all parties of the decision and the reasons why the complaint was dismissed.

(f) If the enforcement committee determines that a violation has occurred and that disciplinary action is warranted, the executive director, or their designee, will advise the licensee of the alleged violations and offer the licensee a settlement in the form of an agreed order that specifies the disciplinary action and monetary penalty. With the agreement of the licensee, the enforcement committee may recommend that the licensee refund an amount not to exceed the amount the complainant paid to the licensee instead of or in addition to imposing an administrative penalty on the licensee. The executive director, or their designee, must inform the licensee that the licensee has a right to a hearing before an administrative law judge on the finding of the occurrence of the violation, the type of disciplinary action, and/or the amount of the recommended penalty.

(g) Within the time period prescribed, the licensee must submit a written response to the Board:

(1) accepting the settlement offer and recommended disciplinary action; [~~,~~] or

(2) requesting a hearing before an administrative law judge.

(h) Additional negotiations may be held between board staff and the licensee or the authorized representative. In consultation with the board representatives, as available, the recommendations of the board representatives may be subsequently modified based on new information, a change of circumstances, or to expedite a resolution in the interest of protecting the public.

(i) The board representative(s) shall be consulted and must concur with any subsequent substantive modifications before any recommendations are sent to the full Board [~~board~~] for approval.

(j) Board staff may communicate directly with the board representative(s) after the ISC for the purpose of discussing settlement of the case.

(k) If the licensee accepts the settlement offer by signing the agreed order, the agreed order will be docketed for board action at the next regularly scheduled board meeting.

(l) The recommendations may be adopted, modified, or rejected by the Board.

(m) If the Board approves the agreed order with amendments, the executive director, or their designee, shall mail the amended agreed order to the licensee and the licensee shall have fourteen (14) days from receipt to accept the amended agreed order by signing and returning it to the Board. If a licensee does not sign an amended agreed order or does not respond within the fourteen (14) days, the complaint will be scheduled for a hearing before an administrative law judge. If the Board rejects the agreed order, the complaint may be scheduled for a hearing before an administrative law judge, or the Board may direct the executive director to take other appropriate action.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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22 TAC §575.30

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.30, concerning Contested Case Hearings at SOAH.

The Board proposes to amend §575.30 to include licensure cases against individuals who have been found ineligible for licensure in the description of the process by which the Board schedules and conducts hearings before SOAH. The proposed amendment also seeks to modernize §575.30 by replacing references to a complaint affidavit, which the Board used as part of its orders prior to the advent of SOAH, with the notice of hearing used under current SOAH procedure and required by

§2001.052 and §2001.054 of the Administrative Procedure Act, Government Code.

The proposed amendment also adds a new subsection (h), to require that when a party to a contested case offers proposed findings of fact, the Administrative Law Judge (ALJ) will rule on each proposed finding, in keeping with §2001.141(e) of the Administrative Procedure Act. By requesting a ruling on proposed findings of fact, the Board hopes to acquire more insight into the ALJ's reasoning behind the holding and to give the ALJ an opportunity to reflect on what the Board believes it has proved in the contested case hearing prior to making a proposal for decision.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to state or local government as a result of this amendment. Ms. Oria has also determined that there will be no impact on costs to either state or local government as a result of enforcing or administering the rule as proposed, as the Board is already required by the Administrative Procedure Act to hold SOAH hearings for individuals denied licensure. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify for individuals seeking licensure the process for a hearing on their contested case at SOAH.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the rule, because the Administrative Procedure Act already requires SOAH hearings for contested cases involving licensure issues. There is no adverse impact expected for small or micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§575.30. Contested Case Hearing at SOAH.

(a) If a [~~the~~] licensee or applicant for licensure declines to sign a proposed agreed order [~~the board's settlement offer~~], or if the licensee or applicant for licensure fails to respond timely to a proposed agreed order [~~the offer~~], or if the Board [~~board~~] rejects a proposed agreed order, the board staff may proceed with the filing of a contested case [~~complaint~~] with the State Office of Administrative Hearings (SOAH). [~~The date the board staff signs the complaint is the official date of filing the complaint with the board. The complaint shall serve as the board's pleading in a contested case.~~] At least ten (10) days prior to a scheduled hearing, the [~~complaint and~~] notice of hearing shall be served on the licensee or applicant for licensure as set out in subsection (g)(1) of this section. Except in cases of temporary suspension, a notice of hearing [~~complaint~~] shall be filed only after notice of the facts or conduct alleged to warrant the intended action has been sent to the licensee's or applicant for licensure's address of record and the licensee or applicant for licensure has an opportunity to show compliance with the law for the retention of a license as provided in §2001.054 of the APA, and §801.408 of the Veterinary Licensing Act.

(b) SOAH hearings of contested cases shall be conducted in accordance with the Act, the APA, SOAH rules, and board rules. In the event of a conflict, the Act shall prevail over any other statute or rule, the APA shall prevail over SOAH rules, and SOAH rules shall prevail over the rules of the Board [~~board~~], except when board rules provide the Board [~~board's~~] interpretation of the Act. If SOAH rules are silent on an issue addressed by this subchapter, the provisions of this subchapter shall be applied.

(c) The administrative law judge (ALJ) has the authority under SOAH rules, Chapter 155, to issue orders, to regulate the conduct of the proceeding, rule on motions, establish deadlines, clarify the scope of the proceeding, schedule and conduct prehearing and posthearing conferences for any purpose related to any matter in the case, set out additional requirements for participation in the case, and take any other steps conducive to a fair and efficient process in the contested case, including referral of the case to a mediated settlement conference or other appropriate alternative dispute resolution procedure as provided by Chapter 2003 of the Government Code.

(d) All documents are to be filed at SOAH after it acquires jurisdiction. Copies of all documents filed at SOAH shall be contemporaneously filed with the Board [~~board~~].

(e) Because of the often voluminous nature of the records properly received into evidence by the ALJ, the party introducing such documentary evidence should paginate each exhibit and/or flag pertinent pages in each exhibit in order to expedite the hearing and the decision-making process.

(f) In accordance with the provisions of the APA, Section 2001.058(e), a party may file an interlocutory or interim appeal to the Board [~~board~~] requesting that the Board [~~board~~] vacate or modify an order issued by an ALJ.

(g) Notice of SOAH hearing; continuance and default.

(1) The Board [~~board~~] shall provide notice of the time, date, and place of the hearing to the licensee or applicant for licensure. The notice shall include the requirements set forth in Section 2001.052 of the APA. The Board [~~board~~] shall send notice of a contested case hearing before SOAH to the licensee's or applicant for licensure's last known address as evidenced by the records of the Board [~~board~~]. Respondent is presumed to have received proper and timely notice three (3) days after the notice is sent to the last known address as evidenced by the records of the Board [~~board~~]. Notice shall be given by first class mail, certified or registered mail, or by personal service.

(2) If the licensee or applicant for licensure fails to timely enter an appearance or answer the notice of hearing, the Board [~~board~~] is entitled to a continuance at the time of the hearing. If the licensee or applicant for licensure fails to appear at the time of the hearing, the Board [~~board~~] may move either for dismissal of the case from the SOAH docket, or request that the ALJ [~~administrative law judge~~] issue a default proposal for decision in favor of the Board [~~board~~].

(3) Proof that the licensee or applicant for licensure has evaded proper notice of the hearing may also be grounds for the Board [~~board~~] to request dismissal of the case or issuance of a default proposal for decision in favor of the Board [~~board~~].

(h) If a party submitted proposed findings of fact, the proposal for decision shall include a ruling on each proposed finding by the ALJ, including a statement as to why any proposed finding was not included in the proposal for decision.

(i) [~~(h)~~] After receiving the ALJ's findings of fact and conclusions of law in the proposal for decision, the Board [~~board~~] shall rule on the merits of the charges and enter an order. The Board [~~board~~] by order may find that a violation has occurred and impose disciplinary action, or find that no violation has occurred. The Board [~~board~~] shall promptly advise the complainant of the Board's [~~board's~~] action.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 28, 2013.

TRD-201300296
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 305-7563

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22 TAC §575.50

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.50, concerning Criminal Convictions.

The Board proposes to amend §575.50 to add a reference to equine dental provider licensees to subsection (a) in order to ensure that the crimes listed in the rule are considered "related to the practice" for both equine dentistry as well as veterinary medicine for purposes of determining whether a licensee should be disciplined by the Board for having committed one of the listed crimes. Equine dentistry is already referenced in subsection (e), so the Board intends the proposed amendment to clarify rather than change the Board's interpretation of the rule as it applies to equine dental provider licensees. The proposed amendment is necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers. The Board's Equine Dental Provider Advisory Committee has reviewed and approved the proposed amendment.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to state or local government as a result of this amendment. Ms. Oria has also determined that there will be no impact on costs to either state or local government as a result of enforcing or administering the rule as proposed, as the amendment does not change the Board's current interpretation of the rule or current procedures. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify which crimes the Board has found to be related to the practice of equine dentistry and thereby allow the Board to protect the public more readily and efficiently from equine dental provider licensees and applicants for licensure who commit crimes that are related to the practice of equine dentistry.

Ms. Oria has determined that some equine dental providers, including micro-businesses operating as equine dental provider practices, who are convicted of a crime and thereby become subject to discipline by the Board, will experience a minor economic cost increase associated with complying with the proposed rule for each of the first five years that the rules are in effect, due to the costs associated with the Board's disciplinary process that an equine dental provider could incur if he or she commits a crime related to the practice of equine dentistry. However, Ms. Oria has also determined that the legal employment and advertising opportunities that come with licensure by the Board as an equine dental provider should outweigh these costs. The Board estimates that there are approximately 51 equine dental provider micro-businesses in Texas, and the Board expects that the vast majority of these will never be involved in a crime related to the practice of equine dentistry. The proposed amendment is necessary to implement HB 414, which required that equine dental providers be licensed and regulated by the Board. In HB 414, the Texas Legislature itself set many parameters that create costs for equine dental providers under the proposed rule revision including, but not limited to, the requirement that equine dental providers uphold the same standard of care as licensed veterinarians. Thus, the Board determined that there are no legal and feasible alternatives or other less expensive methods of regulating and disciplining licensed equine dental providers than through the Board's established disciplinary process. The proposed amendments will not cause any increased costs for licensed veterinarians.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter, and §801.151(c)(1), which states that the Board shall adopt rules to protect the public.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§575.50. Criminal Convictions.

(a) In a process under Chapter 53, Occupations Code, the Board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of either a veterinarian or an equine dental provider. This subsection applies to persons who are not imprisoned at the time the Board considers the conviction.

(b) The Board shall revoke a license upon the imprisonment of a licensee following a felony conviction or revocation or felony community supervision, parole, or mandatory supervision. A person currently incarcerated because of a felony conviction may not sit for license examination, obtain a license under the Veterinary Licensing Act, Occupations Code, Chapter 801, or renew a previously issued license.

(c) The Board shall, in determining whether a criminal conviction directly relates to the duties and responsibilities of a licensee, consider the factors listed in the Occupations Code, §53.022.

(d) In determining the present fitness to perform the duties and discharge the responsibilities of a licensee who has been convicted of a crime, the Board shall consider, in addition to the factors referenced in subsection (c) of this section, the factors listed in the Occupations Code, §53.023.

(e) Both the practice of veterinary medicine and the practice of equine dentistry places the licensee in a position of public trust. A licensee practices in an autonomous role in the treating and safekeeping of animals; preparing and safeguarding confidential records and information; accepting client funds; and, if the licensee is a veterinarian, prescribing, administering and safely storing controlled substances. The following crimes relate to the practices of veterinary medicine and equine dentistry. The commission of each indicates a violation of the public trust, and a lack of integrity and respect for one's fellow human beings and the community at large:

(1) any felony or misdemeanor conviction of which fraud, dishonesty or deceit is an essential element;

(2) any criminal violation of the Veterinary Licensing Act, or other statutes regulating or pertaining to the practice or profession of veterinary medicine or equine dentistry;

(3) any criminal violation of statutes regulating other professions in the healing arts;

(4) deceptive business practices;

(5) a misdemeanor or felony offense involving:

(A) murder;

(B) assault;

(C) burglary;

(D) robbery;

(E) theft;

(F) sexual assault;

(G) injury to a child or to an elderly person;

(H) child abuse or neglect;

(I) tampering with a government record;

(J) animal cruelty;

(K) forgery;

(L) perjury;

(M) bribery;

(N) mail fraud;

(O) diversion or abuse of controlled substances, dangerous drug, or narcotic; or

(P) other misdemeanors or felonies, including violations of the Penal Code, Titles 4, 5, 7, 9, and 10, which indicate an inability or tendency of the person to be unable to perform as a licensee or to be unfit for licensure, if action by the Board will promote the intent of the Veterinary Licensing Act, Board rules, including this chapter, and the Occupations Code, Chapter 53.

(f) Notwithstanding the provisions of subsections (a) - (e) of this section, the Board shall suspend or revoke a licensee's license in accordance with the Occupations Code, §801.406, where the licensee has been convicted of a felony under the Health and Safety Code, §485.033, or the Health and Safety Code, Chapter 481 or 483.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 28, 2013.

TRD-201300297
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 305-7563

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PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES

SUBCHAPTER A. THE BOARD

22 TAC §§661.1 - 661.3, 661.5, 661.7 - 661.11

The Texas Board of Professional Land Surveying (Board) proposes amendments to §§661.1 - 661.3, 661.5, and 661.7 - 661.11, concerning The Board.

The proposed amendments establish the capitalized terms, "Board" and "Executive Director" as the consistent references within the Board Rules to the Texas Board of Professional Land Surveying and make minor non-substantive grammatical corrections. The proposed amendment to §661.5 clarifies a reference to "same" to mean a reference to the Board seal that the Executive Director will maintain for the Board and affix to the Board's official documents. The proposed amendment also specifies that the Board will provide to the Executive Director not only necessary equipment and supplies but also stenographic assistance. The proposed amendment also clarifies a second reference to "same" to mean a reference to the necessary equipment, supplies, and stenographic assistance that the Board will pay for and furnish to the Executive Director.

Marcelino Estrada, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended sections.

Mr. Estrada has determined that for each year of the first five-year period the rules are in effect there will be no local employment impact as a result of adoption of the proposed rules.

Mr. Estrada has determined that for each of the first five years the rules are in effect, the anticipated public benefit will be that the Board's Rules will be more consistent and precise. Mr. Estrada has determined that there will be no economic cost to individuals required to be subject to the rules. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

Mr. Estrada has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and therefore does not constitute a taking under Texas Government Code §2007.043.

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by email at njackson@txls.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §§1071.002, 1071.055, 1071.101, 1071.102, 1071.151, 1071.152, 1071.153, and Government Code §2001.004.

No other sections are affected by the proposal.

§661.1. Name.

The name of the Board [~~board~~] shall be Texas Board of Professional Land Surveying. For the purpose of brevity in succeeding rules this organization shall be subsequently referred to as the Board [~~board~~].

§661.2. Headquarters.

The headquarters of the Board [~~board~~] shall be in Austin.

§661.3. Chair.

The chair shall, when present, preside at all meetings, except as otherwise provided herein. The chair shall appoint such committees as the Board [~~board~~] may authorize from time to time. The chair shall sign all certificates.

§661.5. Executive Director.

The Executive Director [~~executive director~~] shall conduct and care for all correspondence in the name of the Board [~~board~~]. The Executive Director [~~executive director~~] shall maintain all records prescribed by law. The Executive Director [~~executive director~~] shall keep a record of all meetings and maintain a proper account of all business of the Board [~~board~~]. The Executive Director [~~executive director~~] shall be the custodian of the official seal and affix the seal [~~same~~] to all certificates and other official documents upon the orders of the Board [~~board~~]. The Executive Director [~~executive director~~] shall check and certify all bills and check all vouchers (claims) and shall approve same, if appropriate, and shall perform such other duties as directed by the Board [~~board~~]. The Board [~~board~~] shall furnish the Executive Director [~~executive director~~] the necessary equipment, supplies, and stenographic assistance, paying for these items [~~same~~] directly on vouchers (claims) handled as prescribed herein and by law.

§661.7. Executive Committee.

The executive committee may consist of three members of the Board [~~board~~]. Its duties shall be to transact all business instructed by the Board [~~board~~], during the intervals between Board [~~board~~] meetings, and to report thereon to the Board [~~board~~] at its meetings. It shall also recommend to the Board [~~board~~] such actions in respect to policies and procedures as it may consider desirable.

§661.8. Standing Committees.

For the purpose of administering examinations there shall be two standing committees.

(1) The Licensed State Land Surveyors Committee shall prepare, administer, and grade the licensed state land surveyor's [~~surveyors~~] examination. This committee shall be made up of the commissioner or his/her authorized representative and all of the licensed state land surveyors on the Board [~~board~~]. A quorum shall be a majority of the committee members.

(2) The Registered Professional Land Surveyors Committee shall attend to the preparation and grading of the registered professional land surveying examination. This committee shall be made up of all the members of the Board [~~board~~]. A quorum shall be a majority of the committee members.

§661.9. Special Committees.

Special committees shall have such duties as may be assigned by the chair of the Board [~~board~~], with the consent of the Board [~~board~~].

§661.10. Financial.

(a) Payment of all salaries and other approved operating expenses of the Board [~~board~~] shall be made by itemized vouchers (claims). Such vouchers (claims) shall be approved by the Executive Director [~~executive director~~] of the Board [~~board~~]. The Executive Director [~~executive director~~] shall maintain complete records of the financial transactions of the Board [~~board~~] as prescribed by the state comptroller and by law.

(b) Pursuant to the requirements of §2161.003 of the Government Code, the Texas Board of Professional Land Surveying adopts the rules of the Comptroller of Public Accounts relating to the Historically Underutilized Business (HUB) Program and stated at 34 TAC [~~Texas Administrative Code~~] Part 1, Chapter 20, Subchapter B, §§20.10 - 20.19 [~~§§20.11 - 20.16~~].

§661.11. Vacancies.

If for any reason, a vacancy shall occur in the Board [~~board~~], the chair may call a special meeting for the purpose of preparing a notice to the governor asking for the appointment of a new member to fill the unexpired term. If the vacancy shall occur in the office of the chair, the vice chair may call the meeting.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300244
Marcelino A. Estrada
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 239-5267

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SUBCHAPTER B. MEETINGS

22 TAC §661.23, §661.24

The Texas Board of Professional Land Surveying (Board) proposes amendments to §661.23 and §661.24, concerning Meetings.

The proposed amendments establish the capitalized terms "Board" and "Executive Director" as the consistent references within the Board Rules to the Texas Board of Professional Land Surveying. The proposed amendment of §661.23 changes to

active voice the requirement that the Executive Direct send notice of the Board's meetings a week in advance.

Marcelino Estrada, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended sections.

Mr. Estrada has determined that for each year of the first five-year period the rules are in effect there will be no local employment impact as a result of adoption of the proposed rules.

Mr. Estrada has determined that for each of the first five years the rules are in effect, the anticipated public benefit will be that the Board's Rules will be more consistent and precise. Mr. Estrada has determined that there will be no economic cost to individuals required to be subject to the rules. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

Mr. Estrada has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and therefore does not constitute a taking under Texas Government Code §2007.043.

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by email at njackson@txls.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §§1071.058, 1071.101, and 1071.151.

No other sections are affected by the proposal.

§661.23. Notice of Meetings.

Notice of meetings shall be published and posted in compliance with law. The Executive Director shall mail notice [~~Notice~~] of all meetings out [~~shall be mailed out by the executive director~~] to each member at his/her last known address at least one week prior to said meeting.

§661.24. Proceedings.

Robert's Rules of Order shall govern the proceedings of the Board [~~board~~] except as otherwise provided herein or by statute.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2013.

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Marcelino A. Estrada
Executive Director
Texas Board of Professional Land Surveying
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For further information, please call: (512) 239-5267

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SUBCHAPTER C. DEFINITIONS OF TERMS

22 TAC §661.31, §661.33

The Texas Board of Professional Land Surveying (Board) proposes amendments to §661.31 and §661.33, concerning Definitions of Terms.

The proposed amendments establish the capitalized term "Board" as the consistent reference within the Board Rules to the Texas Board of Professional Land Surveying. Amendments to §661.31 clarify several terms used within the Board's Rules, add certain terms not previously defined, and promote uniformity of application and interpretation of defined terms.

The Board proposes renaming §661.33 as Easement Depiction, and the amendment is proposed to clarify that in general, a person registered or licensed by the Board, in preparing an exhibit that depicts a proposed easement, is subject to all Board Rules. The amended rule is intended to apply to all exhibits prepared by a registered professional land surveyor regardless of whether monumentation is placed on the ground. The amended rule also provides exceptions to the stated general rule. The amendment eliminates ascertainment of the easement area by the general public because the Board believes this is not a precise or attainable standard. The amendment also reiterates the meaning of the term "construction estimate" defined in §661.31(4) and places it in context within this rule pertaining to the Board's expectations concerning easements.

Marcelino Estrada, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended sections.

Mr. Estrada has determined that for each year of the first five-year period the rules are in effect there will be no local employment impact as a result of adoption of the proposed rules.

Mr. Estrada has determined that for each of the first five years the rules are in effect, the anticipated public benefit will be that the Board's Rules will be more consistent and precise. Mr. Estrada has determined that there will be no economic cost to individuals required to be subject to the rules. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

Mr. Estrada has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and therefore does not constitute a taking under Texas Government Code §2007.043.

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by email at njackson@txls.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §§1071.004, 1071.058, 1071.101, and 1071.151.

No other sections are affected by the proposal.

§661.31. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Professional Land Surveying Practices Act and Amendment.

(2) Board seal--The seal of the Board shall be as authorized by the Board.

(3) [~~(2)~~] Certificate of registration and certificate of licensure--A license to practice professional land surveying in Texas. A certificate of licensure is a license to practice state land surveying in Texas.

(4) Construction estimate--"construction estimate", as used in §1071.004 of the Act, means a depiction of a possible easement route for planning purposes.

(5) [~~(3)~~] Contested case--A proceeding, including, but not restricted to, ratemaking and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the Board [~~board~~] after an opportunity for adjudicative hearing.

(6) Direct supervision--To be able to recognize and respond to any problem that may arise; give instruction for the solution to a problem; have knowledge of the research and the collection, of relevant data; the placement of all monuments; the preparation and delivery of all Documents.

(7) Firm--A business entity including but not limited to a partnership, limited partnership, sole proprietor, association, corporation, limited liability company, limited liability partnership and/ or other entity for conducting business.

(8) Offer of surveying services--Any form of advertisement for land surveying services, including but not limited to verbal offer, hard copy, electronic web site, telephone listing, written proposal or other marketing materials.

(9) [~~(4)~~] Renewal--The payment of a fee annually as set by the Board [~~board~~] within the limits of the law for the certificate of registration or the certificate of licensure.

(10) Report--Survey drawing, written description, and/or separate narrative depicting the results of a land survey performed and conducted pursuant to this Act.

(11) [~~(5)~~] Rule--Any Board [~~board~~] statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the Board [~~board~~]. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the Board [~~board~~] and not affecting the private rights or procedures.

(12) Seal--An embossed or stamped design authorized by the Board that authenticates, confirms, or attests that a person is authorized to offer and practice land surveying services to the public in the State of Texas and has legal consequence when applied.

~~[(6) Seal--The seal of the board shall be as authorized by the board.]~~

§661.33. Easement Depiction [~~Easements and Construction Estimates~~].

(a) An easement depiction prepared by any person registered or licensed under the Act shall adhere to all rules promulgated by the Board except where: [~~An easement legal description or plat depiction which is used in a real property conveyance or filed for recording in the real property records or plats records of this state must be prepared by a registrant, except when all of the following conditions listed in paragraphs (1) - (3) of this subsection are satisfied:~~]

(1) the easement area can be clearly ascertained [~~by the general public~~] without reference to a metes and bounds description of the easement; and

~~[(2) monumentation is not placed on the ground; and]~~

(2) [~~(3)~~] the easement does not bisect or protrude into the tract (leaving non-easement areas on opposite sides of the easement strip).

(b) An easement's legal description or plat depiction meets the requirements of the exception to this rule when the easement:

(1) is a blanket easement; or

(2) the easement:

(A) is within a tract of land or lot depicted in a recorded subdivision plat;

(B) can be clearly defined and located without a metes and bounds description; and

(C) is adjacent to a platted boundary line.

(c) A "construction estimate", as used in §1071.004 of the Act, means a depiction of a possible easement route for planning purposes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300246
Marcelino A. Estrada
Executive Director
Texas Board of Professional Land Surveying
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For further information, please call: (512) 239-5267

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SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

22 TAC §§661.41 - 661.47, 661.50 - 661.52, 661.55 - 661.57

The Texas Board of Professional Land Surveying (Board) proposes amendments to §§661.41 - 661.47, 661.50 - 661.52, and 661.55 - 661.57, concerning Applications, Examinations, and Licensing.

The amendments are proposed to make minor non-substantive corrections to formatting and capitalization and in some cases change wording from passive to active voice. They establish the capitalized terms "Board" and "Executive Director" as the consistent references within the Board Rules to the Texas Board of Professional Land Surveying. In several sections, amendments are proposed to insert the word "land" before the word "surveying" to clarify this term as opposed to marine surveying, traffic

surveying, or other endeavors where the generic term "surveying" may be in use.

The proposed amendments make a minor correction to eliminate a superfluous period that appears before the term "pdf" in §661.41 and clarify that the written experience record and sample survey reports submitted by the applicant will be maintained by the Board as part of its permanent files.

Amended §661.42 is proposed to update the reference to the correct current name of the Public Information Act (formerly the "Open Records Act"). The proposed amendments also eliminate outdated charges for providing specific categories of public information and install longevity and flexibility in the rule by clarifying that the charges for providing copies of public information will be calculated pursuant to the state guidelines in effect at the time of a records request.

Amended §661.45 is written to state more clearly that calculators are permitted for use during land surveyor examinations.

Amended §661.46 proposes to require a seal which is defined in Board rules. The amendment proposes to eliminate the term "Stamps" in its title because the Act does not require a land surveyor to obtain a stamp. The proposed rule adds the requirement for an applicant who receives a certificate of registration/licensure to affix his/her seal and signature to an oath which affirms the professional's commitment to place the interest of the public above all others and to follow the Board's Act and Rules in the practice of land surveying. The proposed amendment would also require a registrant at time of annual renewal to affirm the oath. The Board believes that the new annual emphasis reminding each registrant and license holder of his/her professional responsibility to the public and requiring a personal pledge to follow the Board Act and Rules in the practice of land surveying will encourage and enhance high standards of conduct and ethics among land surveyors.

Amended §661.47 proposes to clarify that the Board's determination of whether a reciprocal jurisdiction's licensing standards are substantially equivalent to those in Texas shall be based on a review of the standards of the foreign jurisdiction in effect at the time the license applicant was licensed in the reciprocal state. The proposed amendments would reduce the length of the examination required of a reciprocal applicant. The Board believes that an examination not to exceed four (4) hours is adequate to assess competence of a reciprocal applicant, and this change makes the rule compatible with §1071.259 of the Act.

Amended §661.50 would replace the designation "Surveyor Intern" and its acronym "SI" with the more accurate and consistently-used designation "Surveyor In Training" and its acronym "SIT," which is referenced in other Board rules. The proposed amendments make clear that each individual SIT who passes the NCEES exam pertaining to fundamentals of land surveying after January 1, 1993 is required to obtain specified experience described in the rule.

Amended §661.52 inserts the word "Surveyor" to make consistent the term "Inactive Surveyor" as used throughout the rule. The proposed amendments remove the distinction between a surveyor who has chosen to be on Inactive status for less than or more than one year. The amendments also propose to give greater authority to the Board's Executive Director in deciding whether the Application, fee, and professional education requirements warrant a return to active status in a particular case or whether the Board should consider the matter.

Amendments proposed to §661.55 create consistency in the use of the term "Firm" to describe various business entities that may offer professional land surveying services. The proposed amendments also more closely track the language of the enabling statute in prohibiting a Firm from offering land surveying services until the Firm applies for and receives a Firm Registration certificate. The proposed amendments detail the necessary contents of the Firm Registration application form. The proposed amendments reduce the requirement that a person registered under the Act ensure that a Firm employing the person comply with all applicable Board rules and instead propose that a person registered under the Act ensure that the employing Firm complies with the filing requirements for a Firm Registration certificate. The proposed amendments reduce the span of time within which a person registered under the Act and employed by a Firm must notify the Board of leaving Firm employment. The Board is authorized to obtain the identification of the registered professional land surveyor who is responsible for the business entity land surveying practice, and the proposed amendments include an oath to be signed and sworn by a responsible party on behalf of the Firm that pledges: 1) the Firm's affirmation to place the interests of the public above all others in its practice of professional land surveying; and 2) the Firm's commitment to adhere to the Professional Land Surveying Practices Act and Board rules.

Proposed amendments to §661.56 rename the section as Land Surveying Firm Renewal and Expiration to more clearly describe the topics addressed in the rule.

Amendments proposed to §661.57 are designed to offer detail to Firms beyond the registration requirements. The proposed amendments more closely track the language of the enabling statute in prohibiting a Firm from offering land surveying services until the Firm applies for and receives a Firm Registration certificate. The proposed amendments specify that the Firm Registration Number must be contained with any offer to provide land surveying services. The proposed amendments provide that a full-time active license holder must be in the employ of the Firm, must perform or supervise work that requires a license, including work performed in branch offices, and must affix his/her seal and signature to the Firm's land survey products. The proposed amendments state a requirement that a Firm shall cooperate with any Board investigation concerning complaints against a land surveyor employed by the Firm.

Marcelino Estrada, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended sections.

Mr. Estrada has determined that for each year of the first five-year period the rules are in effect there will be no local employment impact as a result of adoption of the proposed rules.

Mr. Estrada has determined that for each of the first five years the rules are in effect, the anticipated public benefit will be that the Board's Rules will be more consistent and precise. Mr. Estrada has determined that there will be no economic cost to individuals required to be subject to the rules. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

Mr. Estrada has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code

§2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and therefore does not constitute a taking under Texas Government Code §2007.043.

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by email at njackson@txls.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §§1071.004, 1071.058, 1071.101, 1071.151, 1071.152, 1071.155, 1071.1526, 1071.252, 1071.253, 1071.258, 1071.259, 1071.263, 1071.351, 1071.352, and 1071.353.

No other sections are affected by the proposal.

§661.41. Applications.

(a) An applicant qualified by law who wishes to take an examination for certification or for registration to practice professional land surveying and/or state land surveying in Texas shall be furnished duplicate application forms, one to be returned to the office of the Board [~~board~~], the other to be retained by the applicant. Applications received by the Board [~~board~~] shall be examined by the Executive Director [~~executive director~~] for conformity with the rules and regulations governing applications as established by the Board [~~board~~]. Applications accompanied by proper fees and in the form prescribed by the Board [~~board~~] shall be entered in the records of the Board [~~board~~]. Applications not accompanied by proper fees or not conforming to [~~with~~] the rules and regulations shall be returned to the applicant. Each applicant shall be required to furnish all information requested on the application form. The application form shall contain general information regarding the applicant, a recent passport type photograph, other registration and memberships, references and qualifications, formal education information with certified transcripts of college work, personal surveying experience, and instructions for filing the form.

(b) The application shall be neatly typed or lettered and all questions must be answered. If the answer is negative, the applicant shall use the word "no" or "none." It is the applicant's responsibility to see that certified transcripts of college work and any other information required or requested by the Board [~~board~~] are received in the office of the Board [~~board~~] on or before July 15 or January 15 in order for the applicant's file to be considered for the ensuing examination. Experience time will be counted only up to the date of the filing of the application with fee. Applications will not be considered if essential information is lacking.

(1) It is important that the experience record of the applicant be completed in detail giving character of work performed, particularly with respect to percentage of time engaged in boundary land surveying as opposed to engineering surveying, title of position, employer, amount of time, and responsibility in each engagement listed. Experience in responsible charge will be counted only if under the direct supervision of a registered professional land surveyor. Give total time in actual land boundary surveying in each engagement. If the space provided in the forms is not sufficient, the applicant may attach as many sheets as necessary. If the experience is of the character that it cannot be described properly in the tabulated form, the applicant may submit a complete narrative account of his/her education, professional, or business career. All documents filed with the application shall remain in the permanent files of the Board.

(2) Accompanying this application shall be two sample survey reports (sketch, map or plat) completed under the direction of a Registered Professional Land Surveyor. Submissions should be paper copies and also digital copies on a CD, DVD, or USB accessible medium. Each survey report should be on a single piece of paper not to exceed 24" x 36". The digital copy should be in pdf [~~.pdf~~] or similar format. Each survey report should include a certification and a list of all documents reviewed in preparation of the survey. However, a signature and seal are not necessary. One survey should be an urban type survey (residential or commercial platted property) with the other being a rural type survey (metes and bounds). Each report will be evaluated for compliance with the existing Act and Rules. All documents filed with the application shall remain in the permanent files of the Board.

[~~(3) All documents filed with the application shall remain in the permanent files of the board.~~]

(c) Application files are considered initiated the date the application is received with fee. If an application is not received within 90 days after date of receipt of reference forms and required information, that file will be closed and the applicant so notified at his/her last known address. If the applicant does not take the examination within one year from the date the application is approved, the file will be closed, and for further consideration by the Board [~~board~~], the applicant will be required to file a complete new application with fee and references.

(d) No credit will be considered for experience obtained in violation of the Professional Land Surveying Practices Act or any applicable prior Act governing the surveying profession. Only that experience obtained in regular full-time employment, or as otherwise specifically allowed in the act and rules, will be considered in evaluating an applicant's record.

(e) Certificate Requirements for Surveyors-In-Training in Other States, Territories or Possessions of the United States. An individual is eligible to be certified as a surveyor-in-training in Texas upon:

(1) Successfully [~~successfully~~] passing the National Council of Examiners for Engineering and Surveying (NCEES) fundamentals of land surveying exam; and

(2) Obtaining [~~obtaining~~] certification as a surveyor-in-training by a state, territory or possession of the United States other than Texas.

(f) The Texas certification as a surveyor-in-training is valid for eight years from the date the surveyor-in-training certificate was issued by the original issuing state, territory or possession of the United States.

(g) The Board [~~board~~] will recognize degrees conferred by the Accreditation Board for Engineering and Technology (ABET), the Southern Association of Colleges (SAC) and the Applied Science Accreditation Commission (ASAC) or their equivalent.

(h) Degrees not accredited by ABET/SAC/ASAC must be evaluated by an organization approved by the Board and shall be done at the expense of the applicant. The Board [~~board~~] will consider recognizing degrees on a case-by-case basis upon submission of the evaluation.

(i) All foreign language documentation submitted must be accompanied by certified translations.

(j) Applicants must speak and write the English language. Proficiency in English may be evidenced by possession of an accredited

bachelor degree taught exclusively in English, or passage of the Test of English as a Foreign Language (TOEFL) with a score of at least 550 and passage of the Test of Spoken English (TSE) with a score of at least 45, or other evidence such as significant academic or work experience in English acceptable to the Board [~~board~~].

§661.42. Fees.

(a) All fees are payable by cashier's check or money order and are not refundable.

(b) In addition to the application fee, an examination fee not to exceed the examination cost and fees for administering the exam is required.

(c) New registrants will be required to pay a prorated part of the annual licensing fee according to their date of registration or licensure.

(d) In compliance with the Public Information [~~Open Records~~] Act, the Texas Board of Professional Land Surveyors will recover the costs of providing copies of public information according to current state [~~the following~~] guidelines.[~~:~~]

[~~(1) For readily available information the following charges will be used:~~]

[~~(A) standard-size paper copy--$.10 per page;~~]

[~~(B) diskette--$1.00 each;~~]

[~~(C) personnel charge--$19 per hour;~~]

[~~(D) overhead charge--20% of personnel charge;~~]

[~~(E) computer resource charge--actual cost;~~]

[~~(F) programming time charge--actual cost;~~]

[~~(G) miscellaneous supplies--actual cost;~~]

[~~(H) postage and shipping charge--actual cost;~~]

[~~(I) fax charge:~~]

~~*(i)* local--$.10 per page;~~

~~*(ii)* long distance (same area code)--$.50 per page;~~

~~*(iii)* long distance (different area code)--$1.00 per page; and~~]

[~~(J) other cost--actual cost.~~]

[~~(2) Information that is not readily available will be subject to the cost outlined in paragraph (1) of this subsection, plus any necessary document retrieval charges.~~]

[~~(3) A deposit may be required if the amount of estimated charges exceeds $100.~~]

[~~(4) Records can be furnished without charge or at reduced charge if it is determined that waiver or reduction is in the public interest.~~]

§661.43. References.

(a) All references shall be chosen carefully for their personal knowledge of the applicant's experience and qualifications. All applicants shall submit to the Board [~~board~~] the names and complete addresses, including zip codes, of not less than three references unrelated to the applicant. Such reference [~~All such references~~] shall be registered or licensed surveyors and have [~~personal~~] knowledge of the applicant's surveying experience and qualifications.

(b) No member of the Board [~~board~~] will be accepted as a reference unless the Board [~~board~~] member is the registered professional land surveyor with the most knowledge of the applicant's experience. The Board [~~board~~] prefers that when an applicant is employed by an organization that includes registered professional land surveyors, the applicant use only one reference from a registered professional land surveyor who is associated with him in such organization. The Board [~~board~~] reserves the right to ask for additional references.

§661.44. Rejections.

Should the Board [~~board~~] reject the application of any applicant; the Board will retain [~~applicant,~~] the fee accompanying the application [~~will be retained by the board~~]. If an application is rejected for any reason, the applicant will be notified by first class mail. The applicant may thereafter file with the Board [~~board~~] any further evidence or reason to support a claim for reconsideration on or before the next application deadline date (§661.41(b) of this title relating to Applications), either July 15 or January 15. It is the policy and intention of the Board [~~board~~] to give a rejected applicant every reasonable opportunity to support a claim for reconsideration and to consider such evidence as may have been omitted from or overlooked in the original application. An applicant may timely apply for a hearing pursuant to Title 2, Occupations Code, Chapter 53.

§661.45. Examinations.

(a) Registered professional land surveyor examinations shall be written and so designed to aid the Board [~~board~~] in determining the applicant's knowledge of land surveying, mathematics, land surveying laws, and his/her general fitness to practice the profession as outlined in the Professional Land Surveying Practices Act. The applicant will be notified at least 10 days in advance of the date, time, duration and place of the examination. If an applicant fails to appear for two successive examinations, the applicant's file will be closed and will not be reopened without the filing of a new application and fee.

(b) Calculators will be permitted to be used during any examination. Only Board approved calculators will be permitted for use during examinations. No communication/imaging device of any type will be permitted, including but not limited to pagers[~~, pocket PCs, scanners, texting devices~~] and cellular phones. Devices or materials that might compromise the security of the examination or the examination process are not permitted in the examination room.

(c) An applicant repeating the examination will be required to repeat only those portions of the examination on which the applicant made less than a passing grade.

(d) Licensed state land surveyors' examinations shall be written and so designed to test the applicant's knowledge of the history, files, and functions of the General Land Office, survey construction, legal aspects pertaining to state interest in vacancies, excesses, and unpatented lands, and familiarity with other state interests in surface and subsurface rights as covered by existing law.

(e) The licensed state land surveyor examination will be in two four-hour sections and each part graded independently. If an applicant fails either part, that applicant will be required to file an updated application with fee and repeat the entire examination.

(f) The contents of all examination materials are confidential. Any registrant and/or applicant who takes an action with the intent to compromise the confidentiality of the examination is subject to disciplinary sanction, administrative penalties, or both. Each candidate will be required to sign a statement that they will neither copy nor divulge any examination problem or solution, and that any violation thereof will be sufficient grounds for invalidating the candidate's examination. In assessing an appropriate penalty or sanction, the Board may do any one or more of the following:

(1) Impose [~~impose~~] the penalties and sanctions set out in the [~~The~~] Act;

(2) Disqualifying [~~disqualifying~~] the applicant from taking future examinations for a period of three years;

(3) Disqualifying [~~disqualifying~~] the applicant from taking future examinations until the applicant successfully completes a Board-approved study of professional ethics;

(4) Disqualify [~~disqualify~~] the applicant from further consideration for certification or registration;

(5) Invalidate [~~invalidate~~] the candidate's examination.

(g) Examination candidates who have been called into active U.S. military duty or who are re-assigned military personnel and will not be available to sit for an examination may request the examination cycle be postponed and any paid examination fees encumbered toward a future examination date. Such candidates shall submit adequate documentation, including copies of orders, and a request to postpone the examination to the Board. The candidate shall notify the Board of their availability to resume the examination cycle within 60 days of release from active duty or when they are deployed to a location that will proctor the examination.

(h) Beginning January 1, 2011, any applicant who is unsuccessful in three attempts to pass any part of a SIT or RPLS examination shall not have an application approved for a subsequent taking of the same examination for a period of one year from the date of notice of failure of the third exam. Applications submitted subsequent to the one year waiting period shall include documented evidence satisfactory to the Board that the applicant has acquired additional education and experience indicative that the applicant would better be able to pass a subsequent examination. This rule applies to all SIT and RPLS examinations administered by the Board, both past and future.

§661.46. Seal and Oath [~~Stamps~~].

(a) At the time the applicant receives a certificate of registration/licensure, the applicant will [~~also be instructed to~~] secure a [~~an impression~~] seal of the type specified by the Board [~~board~~].

(b) At [~~As soon as~~] the time an applicant receives a certificate of registration/licensure, before he/she can offer land surveying services they [~~registrant has secured an impression seal, the registrant~~] shall sign [~~make an imprint thereof~~] and affix [~~shall forward said imprint to the board for its files. A rubber stamp is not considered an impression seal, but may be used at the discretion of the licensee for the purpose of this rule. A rubber stamp signature is not permitted. A registrant or licensee may place~~] their seal to the following oath: I _____ Registered Professional Land Surveyor, Certificate Number _____, hereby affirm [~~and signature on electronic data at the surveyor's discretion, provided~~] that I will place the interest of the public above all others in my practice of Professional Land Surveying and I will adhere to the Texas Board of Professional Land Surveying Act [~~a hard copy form is signed, sealed~~] and General Rules of Procedures [~~retained by the surveyor~~] and Practices [~~carries an original signature and seal~~].

(c) At the time a registrant renews their certificate of registration/licensure, he/she shall affirm the oath in subsection (b) of this section.

§661.47. Reciprocal Registration.

(a) Applicants applying for reciprocal registration under the Professional Land Surveying Practices Act (the Act), §1071.259, shall file with the Board [~~board~~] application forms as described in these rules and such other forms as required by the Board [~~board~~].

(b) The Board [~~board~~] shall determine whether the licensing standards of the governmental authority under which the reciprocal applicant is licensed are substantially equivalent to those standards required in the State of Texas at the time of licensure by the reciprocal state.

(c) If the Board [~~board~~] determines that such standards are not substantially equivalent, the Board [~~board~~] may require the reciprocal applicant to take and pass an [~~all or any part of the 16-hour~~] examination not to exceed four (4) hours as required for applicants under the Act, §1071.259 [~~§§1071.251 - 1071.254~~].

(d) Any cost for administering a reciprocal examination for this Board [~~board~~] by another state will be at the expense of the applicant.

§661.50. Surveyor In Training (SIT) [~~Intern (SI)~~] Experience Requirements.

The following standards [~~rules~~] are to be used in evaluating the two years of experience (although some forms provided by the Board may allow an experience breakdown in hours, it is the intent of the Board that the required experience be obtained over a minimum time period of two calendar years) required for the Surveyor in Training, hereinafter referred to as Survey or In Training (SIT) [~~Intern (SI)~~], under the direct supervision of a designated Registered Professional Land Surveyor [~~registered professional land surveyor~~] (RPLS) acceptable to the Board:

(1) All experience must be obtained under the direction and guidance of one or more registered professional land surveyors designated by the SIT [~~SI~~]. The Board will be notified in writing of the name or names of the designated RPLS prior to the beginning of the internship. If during the internship any designated RPLS changes, the SIT [~~SI~~] must notify the Board that a new RPLS has been designated by the SIT [~~SI~~] and the date of change.

(2) The two [~~TWO~~] years of experience are to be obtained in the area of boundary surveying and boundary determination only. This minimum [~~MINIMUM~~] of two years begins with the date the applicant passes the National Council of Examiners for Engineering and Surveying (NCEES) fundamentals of land surveying portion of the examination. Since only boundary related surveying experience will be accepted, the actual time to complete the internship may take longer than two calendar years. Adequate documentation of the conditions of employment as well as the experience gained therein will be required. Regardless of the total number of acceptable hours of experience gained in this manner, a minimum total time of 4,000 hours of experience extended over a minimum of two calendar years will still be required.

(3) The required experience is divided into two [~~TWO~~] possible types of experience, which are as follows:

(A) Office experience: (one-year minimum). The required office experience will consist of at least three months of acceptable experience within each of the following categories, herein referred to as "acceptable office experience" for a minimum [~~MINIMUM~~] of one [~~ONE~~] year:

(i) Research [~~research~~] of county records and records search;

(ii) Legal [~~legal~~] principles, boundary reconciliation, and deed sketches;

(iii) Computations/traverse [~~computations/traverse~~] accuracy analysis;

(iv) Documentation/description/monumentation-/preparing of [~~documentation/description/monumentation/preparing~~] final surveys. A detailed outline of the SIT's [~~SI's~~] required experience will be furnished to the Board [~~board~~] by the SIT [~~SI~~]. All two years of the experience requirement may be obtained as office experience.

(B) Field experience. The remaining acceptable experience, if not within the previously listed office experience categories, must be within the categories following:

(i) Field [~~field~~] accuracies and tolerances;

(ii) Field [~~field~~] traverse notes;

(iii) Monument [~~monument~~] search based on deed sketches.

(4) The SIT [~~SI~~] is solely responsible for the documentation necessary to verify the acceptable completion of the required experience. The Board [~~board~~] will furnish a form, which will be completed by the SIT [~~SI~~] and signed by both the SIT [~~SI~~] and the designated RPLS for verification. This form will require the SIT [~~SI~~] to describe the specific experience that he/she has obtained during the internship within the categories listed in paragraph (3)(A) of this section. In addition, the SIT [~~SI~~] is to keep a log of the boundary surveying projects and the specific experience obtained for each project.

(5) The SIT [~~SI~~] must notify the designated RPLS in writing that the SIT [~~SI~~] will be using the RPLS for verification of the required experience.

(6) The designated RPLS will agree in writing to the Board [~~board~~] to provide the required experience for the SIT [~~SI~~] and to provide the required supervision and experience verification.

(7) The designated RPLS will conduct periodic reviews of the SIT's [~~SI's~~] performance so that any problems with the required experience can be corrected prior to completion of the time period.

(8) Only one [~~ONE~~] RPLS is required to be designated for the two-year period if all the experience is obtained under that RPLS. Additional RPLSs will not be required unless the direct supervision of the SIT [~~SI~~] changes during the period or the SIT [~~SI~~] is under several RPLSs' supervision.

(9) The SIT [~~SI's~~] experience requirements listed previously will be required for any SIT [~~all the SIs~~] who passes [~~pass~~] the NCEES fundamentals of land surveying portion of the examination on or after January 1, 1993.

§661.51. Surveyor-In-Training Education Requirement.

(a) As a condition for retaining a Surveyor-In-Training (SIT) certificate during the eight year period of working towards completion of registration, the certificate holder must complete professional education activities.

(b) Professional education activities include successful completion of courses in areas supporting development of skill and competence in professional land surveying; participating in programs, seminars, workshops or conferences which provide increased professional knowledge related to the practice of professional land surveying and other continuing education activities which are approved by the Board.

(c) At the end of the eight year period if the certificate holder has not successfully completed registration but wishes to maintain the SIT certification, the Board will require written proof of completion of at least 32 hours of acceptable continuing education during the eight year period as set out in subsection (b) of this section. The certificate can then be renewed on a yearly basis. As a condition for renewal of an SIT certificate, the Board [~~board~~] shall require a certificate holder to successfully complete eight hours of continuing professional education courses per year and compliance with Chapter 664 of this title ([~~;~~] relating to Continuing Education).

§661.52. Inactive Status.

(a) A Surveyor whose registration is in good standing may apply for Inactive Surveyor registration status on a form prescribed by the Board.

(b) An Inactive Surveyor may not practice professional land surveying. If an Inactive Surveyor engages in the practice of professional land surveying, the Inactive Surveyor's registration may be suspended or revoked and may be fined as allowed by the Professional Land Surveying Practices Act.

(c) An Inactive Surveyor shall not use their seal during any period that the registration is Inactive.

(d) An Inactive Surveyor shall pay an annual fee as prescribed by the Board.

(e) In order to return the registration to active status, an Inactive Surveyor who has been on Inactive [~~Status for less than one year~~] must meet the following requirements.

(1) The Surveyor must apply on a form prescribed by the Board. The Board will review the form. After receipt of a complete application, the Board will make a decision on the application at its next scheduled meeting.

(2) The Surveyor must pay the full renewal fee as prescribed by the Board.

(3) The Surveyor must fulfill the continuing professional educational requirement as specified in the Act for the previous year.

(4) Once the application, fee, and proof of continuing professional education have been received in [~~approved by~~] the Board Office, the Executive Director may approve and, the registration will be Active. At the discretion of the Executive Director, he/she may refer the application to the Board for consideration.

[~~(f) An Inactive Surveyor whose registration has been Inactive for a continuous period of one year or more must meet the following requirements.~~]

[~~(1) The Surveyor must apply on a form prescribed by the Board.~~]

[~~(2) The Surveyor must pay the full renewal fee as prescribed by the Board.~~]

[~~(3) The Surveyor must fulfill the continuing professional educational requirement for the current year as specified in the Act.~~]

[~~(4) Once the application, fee, and proof of continuing professional education have been received in the office of the Board, the registration will be Active.~~]

[~~(g) The Board may require that an applicant submit a verification of compliance with the laws as required by statute as part of the application.~~]

§661.55. Registration of Land Surveying Firms [~~Registration~~].

(a) A Firm shall not [~~An association, partnership, corporation or other business entity (firm) may register to~~] offer land surveying services until the Firm applies for and receives [~~by having~~] a Firm Registration Certificate [~~firm principal file an application~~] with the Board, which identifies: [~~. The application form will identify:~~]

(1) The [~~the~~] business and legal names and addresses of the association, partnership, or corporation [~~firm~~];

[~~(2) the name of the owner, partial owner or managing partner who is the responsible party at each location from which the surveying services are offered; and~~]

(2) [(3)] The [the] names and license numbers of all persons registered or licensed under this Act employed by the association, partnership, or corporation [firm at each location from which surveying services are offered].

(b) A person registered or licensed under the Act shall ensure that any Firm [firm] employing them complies with [all applicable board rules including] the filing requirements set forth in subsection (a) of this section.

(c) A person registered or licensed under the Act and employed by a Firm [firm] shall notify the Board in writing [written form] within five (5) business days prior to leaving employment or no later than 24 hours [five (5) business days] after leaving employment. [The firm must notify the board in written form within five (5) business days of any change of employment of a registered professional land surveyor (RPLS). If unemployment of the RPLS is due to a hardship, death, accident or serious illness, the firm may continue to offer surveying services during a transition period of not more than 3 months provided the circumstance is approved by the Executive Director with consent of the board executive committee. Consent shall be based on the involvement and oversight of a licensed RPLS in the provision of surveying services.]

(d) The Board [board] may refuse to issue or renew and may suspend or revoke the registration of a [any] firm and may impose an administrative penalty against the owner of a firm for a violation of this chapter by an employee, agent, or other representative of the entity [firm], including a registered professional land surveyor employed by the entity at the time of the violation. [A FIRM REGISTRATION IS NOT TRANSFERABLE WITHOUT MEETING THE REQUIREMENTS IN SUBSECTION (a) OF THIS SECTION.]

[(e) Any firm furnishing contract land surveying crews to persons, associations, partnerships or corporations not licensed or registered under this act must have a registered professional land surveyor as a full-time employee in that firm as reflected in its registration form filed with the board.]

[(f) A nonrefundable fee, as established by the Board, will be submitted with the registration form.]

[(g) No firm employee other than the RPLS shall affix an RPLS seal and/or the RPLS signature to any Survey document.]

[(h) A full-time employee is an individual employed by a company in an on-going position with a minimum of 35 scheduled work hours per week, 52 weeks per year.]

(e) [(i)] The Board may refer to the Texas Attorney General for appropriate action any person registered or licensed under the Act or any Firm [firm] offering surveying services that fails to comply with this section.

(f) A nonrefundable fee, as established by the Board, will be submitted with the registration form.

(g) At the time the firm receives a certificate of registration, before it can offer land surveying services, a responsible party on behalf of the firm shall sign the following:
Figure: 22 TAC §661.55(g)

§661.56. Land Surveying Firm [Firms] Renewal and Expiration.

(a) The certificate of registration shall be valid until December 31 of the year registered. At least one month in advance of the date of the expiration, the Board shall notify each firm holding a certificate of registration of the date of the expiration and the amount of the fee that shall be required for its renewal for one year. The renewal notice shall be mailed to the last address provided by the firm to the Board. The certificate of registration may be renewed by completing the renewal application and paying the annual registration renewal fee set by the Board. It is the sole responsibility of the firm to pay the required renewal fee prior to the expiration date, regardless of whether the renewal notice is received.

(b) A certificate of registration which has been expired for less than one year may be renewed by completing the renewal statement sent by the Board and payment of two (2) times the normal renewal fee. When renewing an expired certificate of registration, the authorized official of the firm shall submit a written statement of whether surveying services were offered, pending, or performed for the public in Texas during the time the certificate of registration was expired.

(c) If a certificate of registration has been expired for more than one year, the firm must re-apply for certification under the laws and rules in effect at the time of the new application and shall be issued a new certificate of registration firm number if the new application is approved.

(d) The renewal fee will not be refundable.

§661.57. Land Surveying Firms [Firm] Compliance.

[(a)] A Firm [Any firm or other business entity] shall not offer or perform land surveying services to the public unless registered with the Board [board] pursuant to the requirements of §661.55 of this title (relating to Registration of Land Surveying Firms [Survey Firm Registration]).

(1) A Firm shall not offer land surveying services to the public unless the offer of services contains the Firm Registration Certificate number.

(2) A Firm shall provide that at least one full-time active license holder is employed with the entity and that the active license holder performs or directly supervises all surveying work and activities that require a license that is performed in the primary or branch office(s). A full-time active license holder who is employed with the entity shall affix his/her seal and signature to any land survey product produced by the entity.

(3) [(b)] A Firm [firm] shall provide that at least one full-time active license holder is employed with the entity and that the active license holder performs or directly supervises all surveying work and activities that require a license that is performed in the primary or branch office(s).

(4) [(c)] An active license holder who is a sole practitioner shall satisfy the requirement of the regular, full-time employee.

(5) [(d)] No surveying services are to be offered to or performed for the public in Texas by a Firm [firm] while that Firm [firm] does not have a current certificate of registration.

(6) [(e)] A firm [business entity] that offers or is engaged in the practice of surveying in Texas and is not registered with the Board [board] or has previously been registered with the Board [board] and whose registration has expired shall be considered to be in violation of the Act and Board [board] rules and will be subject to administrative penalties as set forth in §1071.451 and §1071.452 of the Act and §661.99 of this title (relating to Sanctions and Penalty Schedule [Matrix]).

(7) [(f)] The Board [board] may revoke a certificate of registration that was obtained in violation of the Act and/or Board [board] rules including, but not limited to, fraudulent or misleading information submitted in the application or lack of employee relationship with the designated professional surveyor for the Firm [firm].

(8) [(g)] If a Firm [firm] has notified the Board [board] that it is no longer offering or performing surveying services to the public,

including the absence of a regular, full-time employee who is an active professional surveyor licensed in Texas, the certificate of registration will expire.

(9) [~~(h)~~] In addition to any other penalty provided in this section, the Board shall have the power to fine, refuse to issue or renew and/or revoke the registration of a firm [~~business entity~~] where one or more of its officers, directors, partners, members, or managers have been found guilty of any conduct which would constitute a violation of the Board's Act or Rules.

(10) A Firm shall cooperate in Board investigations concerning complaints against a current or former Registered Professional Land Surveyor or Licensed State Land Surveyor employed by the Firm, by making all files and other pertinent records available to the surveyor so that he or she may respond to the complaint.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300247
Marcelino A. Estrada
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 239-5267

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22 TAC §661.58

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Board of Professional Land Surveying or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Professional Land Surveying (Board) proposes the repeal of §661.58, concerning Texas Guaranteed Student Loan Corporation Defaulters.

The repeal is proposed to eliminate the Board's rule concerning its handling of Texas Guaranteed Student Loan Corporation Defaulters at this particular location. The Board plans to relocate and replace the rule at another location within the Board rules. The Board believes that the rule is currently misplaced among the rule sections that address Applications, Examinations, and Licensing.

Marcelino Estrada, Executive Director, has determined that for the first five-year period the repeal is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the rule.

Mr. Estrada has determined that for each year of the first five-year period the repeal is in effect there will be no local employment impact as a result of repeal of the rule.

Mr. Estrada has determined that for each of the first five years the rule is repealed and relocated, the anticipated public benefit will be that the Board's rules will be more logical, consistent, and precise. Mr. Estrada has determined that there will be no economic cost to individuals required to comply with the rule. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

Mr. Estrada has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and therefore does not constitute a taking under Texas Government Code §2007.043.

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by email at njackson@txls.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The repeal is proposed under Texas Occupations Code §1071.151 and Education Code §57.491.

No other sections are affected by the proposal.

§661.58. Texas Guaranteed Student Loan Corporation Defaulters.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300254
Marcelino A. Estrada
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 239-5267

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SUBCHAPTER E. CONTESTED CASES

22 TAC §§661.60, 661.62 - 661.65, 661.67, 661.86 - 661.88, 661.97, 661.99, 661.100, 661.102

The Texas Board of Professional Land Surveying (Board) proposes amendments to §§661.60, 661.62 - 661.65, 661.67, 661.86 - 661.88, 661.97, 661.99, 661.100, and 661.102, concerning Contested Cases. The amendments propose to make minor, non-substantive corrections to capitalization.

The proposed amendment to §661.60 clarifies that a failure to fully comply with Board requests, inquiries, decisions, and orders will result in a separate and distinct offense that may result in penalties as provided both in the Act and in Board rules.

The proposed amendment to §661.62 more emphatically states that a filed complaint later withdrawn by the complainant will not affect an existing investigation or the actions of the Executive Director with respect to the complaint. The proposed amendment also provides for greater involvement of the Board's Complaint Review Panel, the make-up of which is included in the amendment, in decisions to dismiss complaints when an investigation fails to substantiate alleged violations of the Professional Land Surveying Practices Act ("Act") or Board rules. The proposed amendment streamlines the rules by eliminating the statement

reiterating §1071.402(g) of the Act. The proposed amendment eliminates certain subsections as duplicative of provisions in the Administrative Procedure Act which may be amended from time to time by the Legislature. The proposed amendment adds precision in the various acts that the Board may take after the Board reviews a proposal for decision submitted by SOAH.

The proposed amendment to §661.63 institutes a sixty-day period following a Board no-violation dismissal of a complaint within which a license holder who was the subject of the complaint may request in writing that the Board find the complaint to be frivolous. The proposed amendment creates a requirement that the written request for a finding of frivolous complaint contain a reasoned justification to illustrate that the complaint was made for the purpose of harassment and demonstrates no harm to any person.

The proposed amendment to §661.86 clarifies that an administrative law judge holds the hearing in a contested case and makes findings of fact and conclusions of law. The administrative law judge issues a Proposal for Decision which is then reviewed and subject to Final Decision and Order by the Board.

The proposed amendment to §661.97 clarifies that a Texas registered land surveyor or firm receiving a land surveying disciplinary action in another jurisdiction has an obligation to report the action to the Board within 30 days of the action becoming final. The proposed amendment is less definitive than the current rule about the effect of the final action from another jurisdiction on the Board's disciplinary action in this state. While the Board believes it is important to receive notice of a surveying regulatory agency disciplinary action from another jurisdiction that concerns a Texas land surveyor or firm, the proposed rule makes clear that the final action in the other jurisdiction may or may not constitute evidence of a violation in this state.

The proposed amendment to §661.99 renames the rule as Sanctions and Penalty Schedule. The Board believes that each and every rule it has promulgated is for the protection of the public and is in furtherance of its statutory duty as directed by the Texas Legislature. Consequently, the Board has determined that the violation of any Board rule may result in a reprimand and the imposition of a $1,500 penalty and proposes this general penalty for any rule violation. The proposed rule, however, acknowledges that the Executive Director or the Board may base final decisions regarding disciplinary action on considerations listed in §1071.451 of the Professional Land Surveying Practices Act and final decisions may vary from the Sanctions and Penalty Schedule depending upon the circumstances.

Marcelino Estrada, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended sections. Mr. Estrada has determined that for each year of the first five-year period the rules are in effect there will be no local employment impact as a result of adoption of the proposed rules.

Mr. Estrada has determined that for each of the first five years the rules are in effect, the anticipated public benefit will be that the Board's Rules will be more streamlined and consistent with current law. Mr. Estrada has determined that there will be no economic cost to individuals required to be subject to the rules. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

Mr. Estrada has determined that this proposal does not constitute a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and therefore does not constitute a taking under Texas Government Code §2007.043.

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by email at njackson@txls.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §§1071.151, 1071.203, 1071.204, 1071.401, 1071.402, 1071.403, 1071.4035, 1071.404, 1071.451, 1071.452, 1071.453, 1071.454, 1071.455, 1071.456, 1071.457, 1071.458, 1071.459, 1071.501, 1071.502, 1071.503, and 1071.504 and Government Code §§2001.058, 2001.141, 2001.142.

No other sections are affected by the proposal.

§661.60. Responsibility to the Board.

(a) A registrant/licensee/SIT/Firm [~~registrant/licensee/SIT/firm~~] whose registration/license/certification is current or has expired but is renewable under the Texas Professional Land Surveying Practices Act and Board rules, is subject to all provisions of the Act and Board rules. A registrant/licensee/SIT/Firm [~~A registrant/licensee/SIT/firm~~] shall respond fully and truthfully to all Board inquiries and furnish all maps, plats, surveys or other information or documentation requested by the Board within 30 days of such registrant's, licensee's, SIT's or Firm's [~~firm's~~] receipt of a Board inquiry or request concerning matters under the jurisdiction of the Board. An inquiry or request shall be deemed received on the earlier of:

(1) The [~~the~~] date actually received as reflected by a delivery receipt from the United States Postal Service or a private courier; or

(2) Two [~~two~~] days after the Board request or inquiry is deposited in a postage paid envelope in the United States Mail addressed to the registrant, licensee, SIT or Firm [~~firm~~] at his/her last address reflected on the records of the Board.

(b) Any registrant, licensee, SIT or Firm [~~firm~~] subject to Board decisions or orders shall fully comply with the final decisions and orders within any time periods which might be specified in such decisions or orders. Failure to timely, fully and truthfully respond to Board inquiries, failure to furnish requested information, or failure to timely and fully comply with Board decisions and orders, shall constitute separate offenses or misconduct subject to such penalties as may be imposed by the Board as provided under the Act and Rules.

(c) The registrant/licensee/SIT/Firm [~~registrant/licensee/SIT/firm~~] is required to cooperate with all investigations of the Board [~~board~~], including but not limited to site inspections, records review and allowing interviews with employees regarding compliance with the Act and Rules.

§661.62. Complaint Process.

(a) All complaints and requests for hearings shall be filed with the Executive Director [~~executive director~~].

(b) Filing of Complaints.

(1) Complaints may be submitted on complaint forms provided by the Board [board] or complaints may be submitted in a written format that includes the following information that is reasonably available to the complainant:

(A) Name [name], address and phone number of complainant and respondent (i.e. person charged with alleged violation);

(B) Nature [nature] and description of the complaint;

(C) Copies [copies] of factual evidence and other information that supports the complaint;

(D) Names [names] and addresses of witnesses; and

(E) Signature [signature] of complainant recognizing the serious nature of the complaint process and consequences of falsifying a government document.

(2) All signed complaints filed will be investigated. Anonymous complaints will be investigated if witnesses or other evidence clearly supports a credible or factual foundation.

(3) Withdrawal of a complaint will [may] not impact an on-going investigation or the actions taken by the Executive Director.

(c) Investigations.

(1) The Board [board] will hire an investigator or contract with an investigator to investigate complaints.

(2) Upon receipt of a complaint, the respondent shall receive a copy of the complaint and have an opportunity to respond.

(3) If investigation fails to substantiate violations of the Act or Board Rules the complaint will be dismissed by the Executive Director upon concurrence of the Board Complaint Review Panel. The Complaint Review Panel shall include one public Board member, one registered or licensed Board member, the Executive Director, the investigator and the Board shall be [executive director and the board] notified at the next scheduled meeting after dismissal.

(4) The person making a complaint that is dismissed may request reconsideration of the dismissal by sending a written request for such within 20 days of receipt of the notice of dismissal.

(5) The investigator may make initial determination of violations.

(6) The investigator may recommend sanctions to the Executive Director [executive director].

(7) The Executive Director [executive director] may recommend an administrative penalty.

[(8) The board will not consider a previously dismissed complaint.]

(d) Determination of Violations. If the Executive Director [executive director] finds that a violation of the Board's [board's] Act or Rules has occurred, the Executive Director [executive director] shall send notice, within 20 days, to both the respondent and the Board [board] outlining the violation and recommending an administrative penalty and/or sanction and/or restitution. In determining the amount of the recommended penalty, the Executive Director [executive director] shall consider items identified in §1071.452(b) [Section 1071.452(b)] of the [The] Professional Land Surveying Practices Act.

(e) Request for Administrative Hearing.

(1) A respondent who is the subject of proposed administrative action by the Executive Director [executive director] may appeal the Executive Director's [executive director's] determination by requesting a contested case hearing or an Informal Settlement Conference as provided herein within 20 business days of receiving notice of the violation. The request must be in a written form that references the complaint number and indicates that the respondent intends to request a contested case hearing. Upon receipt of the request for hearing, the Executive Director [executive director] will set a hearing and provide a copy of the complaint and notice of the hearing to the respondent.

(2) If the respondent fails to request an administrative hearing within 20 days of receiving the notice of violation report, the respondent will be subject to a default order and the Board will set the matter for a hearing on the proposed default order as well as provide notice of the hearing on the proposed default order to the respondent.

(3) The Complaint and Notice of Hearing shall be sent to the respondent by registered or certified mail, addressed to the respondent at his/her most recent address as shown in the records of the Board [board]. Service of the Complaint and Notice of Hearing shall be completed at the time the notice is deposited, postage-paid and properly addressed in a post office or official depository of the United States Postal Service.

[(4) If a respondent fails to appear in person or by legal representative on the day and at the time set for hearing, regardless of whether an appearance has been entered, the Administrative Law Judge, upon motion by the petitioner, shall enter a default judgment in the matter adverse to the respondent who has failed to attend the hearing.]

[(5) For purposes of this section, default judgment shall mean the issuance of a proposal for decision against the respondent in which the factual allegations against the respondent contained in the Complaint shall be admitted as prima-facie evidence and deemed admitted as true, without any requirement for additional proof to be submitted by the petitioner.]

[(6) Any default judgment granted under this section will be entered on the basis of the factual allegations contained in the Complaint and upon the proof of proper notice to the defaulting party opponent. For purposes of this section, proper notice means notice sufficient to meet the provisions of the Government Code §§2001.051, 2001.052 and 2001.054, and §6611.75 of this title (relating to Notice and Hearing); such notice shall also include the following language in capital letters in boldface type: FAILURE TO APPEAR AT THE HEARING WILL RESULT IN THE ALLEGATIONS AGAINST YOU SET OUT IN THE COMPLAINT BEING ADMITTED AS TRUE.]

(4) [(7)] All contested case hearings will be conducted pursuant to the Board rules, the State Office of Administrative Hearings (SOAH) rules and the Administrative Procedures Act.

(5) [(8)] After conclusion of the hearing, SOAH will make a proposal for decision to be presented at a duly noticed Board meeting. The [At which time, the] Board may adopt, amend, or reject [will act on] the proposal for decision as submitted by SOAH.

(f) Informal Settlement Conferences.

(1) After the Executive Director [executive director] has rendered a finding that a respondent violated the Act or Rules, the respondent may request an Informal Settlement Conference to present additional evidence or attempt to negotiate a settlement.

(2) The [Members of the] Informal Settlement Conference committee shall include two Board members, one of which will be a public [board] member, the Executive Director [one registered or licensed board member, the executive director], the investigator, and others as deemed necessary.

(3) The Settlement Conference committee members shall be informal and need not follow the procedure established in the State

Office of Administrative Hearings (SOAH) rules for contested cases. The respondent, his/her attorney and conference members may question witnesses, make relevant statements, present affidavits or statements of persons not in attendance, and may present such other evidence as may be appropriate.

(4) At the conclusion of the Informal Settlement Conference [~~informal settlement conference~~] the complaint may be dismissed or an agreement may be reached regarding a recommendation to be made to the Board [~~board~~] at the next scheduled meeting or a formal hearing may be scheduled.

(5) The Board [~~board~~] may order the respondent to pay restitution to a consumer; the amount may not exceed the amount the consumer paid for the service. The Board [~~board~~] may not require payment of other damages or estimate harm in the restitution order.

(g) Notice of Decision by Board. The Board [~~board~~] shall give notice of the Board's [~~board's~~] order to the person charged. The notice must include:

(1) The [~~the~~] findings of fact and conclusions of law separately stated;

(2) The [~~the~~] amount of any administrative penalty imposed;

(3) A [~~a~~] statement of the person's right to judicial review of the Board's [~~board's~~] order; and

(4) Other [~~other~~] information required by law.

[~~(h) Options Following Decision: Pay or Appeal.~~]

[~~(1) Not later than the 30th day after the date the board's order becomes final as provided by Section 2001.144, Government Code, the person shall:~~]

[~~(A) pay the administrative penalty; or~~]

[~~(B) file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.~~]

[~~(2) Within the 30-day period, a person who acts under subsection (a)(2) of this section may stay enforcement of the penalty by:~~]

[~~(A) forwarding the penalty to the board for placement in an escrow account;~~]

[~~(B) giving to the board a supersedeas bond in a form approved by the board that:~~]

~~(i)~~ ~~is for the amount of the penalty; and~~]

~~(ii)~~ ~~is effective until judicial review of the board's order is final; or~~]

[~~(C) filing with the board an affidavit of the person stating that the person is financially unable to forward the penalty for placement into an escrow account and is financially unable to give the supersedeas bond.~~]

[~~(3) Failure to take action under subsection (b) of this section within the time provided results in waiver of the right to judicial review.~~]

(h) [~~(i)~~] Enforcement of Penalty. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the Board [~~board~~] may refer the matter to the Attorney General for enforcement.

[~~(j) Remittance of Penalty And Interest.~~]

[~~(1) If after judicial review the administrative penalty is reduced or not imposed by the court, the board shall:~~]

[~~(A) remit the appropriate amount, plus accrued interest, to the person if the person paid the penalty; or~~]

[~~(B) release the bond if the person gave a supersedeas bond.~~]

[~~(2) Interest accrues under subsection (a)(1) of this section at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.~~]

(i) [~~(k)~~] Cost of Administrative Hearings.

(1) Default Judgments. In administrative penalty cases brought before the State Office of Administrative Hearings (SOAH), in the event that the Respondent/Licensee is adjudged guilty of an administrative violation by default, the Board [~~board~~] has the authority to assess, in addition to the penalty imposed, cost of the administrative hearing in an amount not to exceed Two Hundred ($200) Dollars.

(2) Trial on the Merits. In administrative penalty cases brought before SOAH, in the event that the Respondent/Licensee is adjudged guilty of an administrative violation after a contested case trial on the merits, the Board [~~board~~] has the authority to assess, in addition to the penalty imposed, the actual costs of the administrative hearing. Such may include the costs of witnesses, costs of adjudication before SOAH, and any other costs that are necessary for the preparation of the Board's [~~board's~~] case, including the cost of any transcriptions of testimony.

§661.63. Frivolous Complaints.

(a) Within sixty (60) days following [~~Following~~] a final decision of the Board [~~board~~] on a complaint, which has been dismissed with no finding of any Rule violations, the license holder who was the subject of the complaint may submit a written request to the Board [~~board~~] that the complaint be found frivolous.

(b) A written request shall [~~should~~] provide a reasoned justification showing that the complaint was made for the purpose of harassment and that the complaint does not demonstrate harm to any person.

(c) The Executive Director [~~executive director~~] and investigator shall review each written request that a complaint be found frivolous and recommend to the Board [~~board~~] whether the request should be granted or denied.

(d) A complaint may be considered to have been made for the purpose of harassment if, among other things:

(1) The [~~the~~] complaint is filed as a threatening, abusive, or retaliatory tactic;

(2) The [~~the~~] complaint is filed as a litigation tactic;

(3) The [~~the~~] complaint is politically motivated; or

(4) The [~~the~~] complaint is based on allegations that are beyond the scope of the Board's [~~board's~~] jurisdiction under the Act.

(e) In evaluating whether a complaint is frivolous, when a complaint is filed or sworn to by a license holder, the Board [~~board~~] will take into account that all license holders are charged with knowledge of the Act and rules and with the professional and technical standards of land surveying.

§661.64. Computation of Time.

(a) Computing time. In computing any period of time prescribed or allowed by the Board's rules [~~these rules~~], by order of the Board [~~board~~], or by any applicable statute, the period shall begin on the day after the act, event, or default in controversy and conclude on

the last day of such computed period, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

(b) Extensions. Unless otherwise provided by statute, the time for filing any pleading may be extended by order of the Executive Director [~~executive director~~], upon written motion duly filed prior to the expiration of the applicable period of time for the filing of the same, showing that there is good cause for such extension of time and that the need therefore is not caused by neglect, indifference, or lack of diligence of the movant.

§661.65. Agreements To Be in Writing.

Stipulations or agreements between parties, their attorneys, or representatives, with regard to any matter involved in any proceeding before the Board [~~board~~] shall be reduced to writing and signed by the parties or their authorized representatives, or dictated into the record by them during the course of a hearing, or incorporated into an order bearing their written approval. This rule does not limit a person's ability to waive, modify, or stipulate any right or privilege afforded by the Board's rules [~~these rules~~], unless precluded by law.

§661.67. Conduct and Decorum.

Every party, witness, attorney, or other representative shall comport himself in all proceedings with proper dignity, courtesy, and respect for the Board [~~board~~], the Executive Director [~~executive director~~], and all other parties. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the Texas State Bar.

§661.86. Final Decisions and Orders.

(a) All final decisions, recommendations, and orders of the Board [~~board~~] shall be in writing and shall be signed by the Board Chair. Based on the [~~A final decision shall include~~] findings of fact, [~~and~~] conclusions of law, and proposal for decision, the Board by order may determine that: [~~separately stated Findings of fact, if set forth in statutory language, shall be accompanied by concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submits proposed findings of fact, the decision shall include a ruling on each proposed finding.~~]

(1) a violation occurred, and impose an administrative penalty or other sanction authorized by law;

(2) a violation did not occur.

(b) Parties shall be notified [~~either personally or by mail~~] of any decision or order. A copy of the decision, recommendation, or order shall be delivered or mailed to the party and to his/her attorney of record. The notice of the decision must inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

§661.87. Administrative Finality.

(a) A decision is final in the absence of a timely motion for rehearing, and is final and appealable on the date of rendition or the order overruling the motion for rehearing, or on the date the motion is overruled by operation of law.

(b) If the Executive Director [~~executive director~~] finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

§661.88. Motion for Rehearing.

A motion for rehearing is a prerequisite to an appeal. A motion for rehearing must be filed by a party within 20 days after the date the party or his/her attorney of record is notified of the final decision or order. Replies to a motion for rehearing must be filed with the Board [~~board~~] within 30 days after the date the party or his/her attorney of record is notified.

§661.97. Action in Another Jurisdiction.

A Texas registered land surveyor or firm who receives a [~~Any~~] disciplinary action relative to the practice of land surveying taken in another jurisdiction [~~on a matter which would constitute a violation of the Texas Professional Land Surveying Practices Act or Board rules~~] shall report such final [~~be sufficient cause for~~] disciplinary action to the Texas [~~by this~~] Board within 30 days. An authenticated copy of the order, adjudication, decision, or evidence of other final action by or on behalf of the regulatory authority in another jurisdiction, which serves substantially the same function as the Texas Board, may [~~shall~~] be conclusive evidence of such violation, and may [~~shall~~] be sufficient to support disciplinary action in this state.

§661.99. Sanctions and Penalty Schedule [~~Matrix~~].

The Board has promulgated Rules which are of such importance to insure that all land surveying services are conducted in the best interest of the public and all those who rely on those services, any violation of any rule will cause[~~,~~] the Executive Director to issue a reprimand and a $1,500 penalty for each violation. The Executive Director, after[~~, Investigator, Administrative Law Judge or the participants in~~] an Informal Settlement Conference, may arrive at a [~~greater or~~] lesser sanction and penalty than suggested in this Rule and may also require additional educational courses. [~~The minimum administrative penalty is $100 per violation. The maximum administrative penalty shall be $1500 per violation.~~] In addition to the sanctions and penalties assessed by the Executive Director [~~noted below~~], the Board may order restitution, suspension, probation and/or additional educational courses. Allegations and disciplinary actions will be set forth in the final Board Order and the severity of the disciplinary action will be based on the following factors:

(1) The [~~the~~] seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts;

(2) The [~~the~~] economic damage to property caused by the violation;

(3) The [~~the~~] history of previous violations;

(4) The [~~the~~] amount necessary to deter a future violation;

(5) Efforts [~~efforts~~] to correct the violation; and

(6) Any [~~any~~] other matter that justice may require.

[~~Figure: 22 TAC §661.99(6)~~]

§661.100. Probation Guidelines.

(a) In addition to or in lieu of an action to revoke, suspend, reprimand, refuse to renew or assess a penalty the Board may initiate an action, which will result in the affected registrant or licensee being placed on probationary status. The following factors may be considered in making a decision regarding probation:

(1) Type [~~type~~] and severity of violation;

(2) Economic [~~economic~~] harm;

(3) History [~~history~~] of violations;

(4) Efforts [~~efforts~~] to correct the violation;

(5) Action [~~action~~] premeditated or intentional;

(6) Motive [~~motive~~];

(7) Attempted [~~attempted~~] concealment of violation;

(8) The [~~the~~] likelihood of future misconduct as shown by:

(A) Degree [~~degree~~] of remorse;

(B) Remedial [~~remedial~~] procedures to prevent future violations; and

(C) Rehabilitative [~~rehabilitative~~] motivation or potential.

(9) Any [~~any~~] other relevant circumstances or facts.

(b) If the Board determines that probation is appropriate to deter future violations of the Act and Board Rules by the Respondent, probation shall be administered consistently under the following guidelines:

(1) For [~~for~~] violations with greater potential to jeopardize public health, safety, welfare, or property, the term of the probation may not be less than one year or more than five years; and

(2) For [~~for~~] violations with less potential to jeopardize public health, safety, welfare, or property, the term of the probation may not be less than six months or more than one year.

(c) The Board may prescribe conditions of probation on a case-by-case basis depending on the severity of the violation that will include reporting requirements, restrictions on practice, site inspections, and/or continuing education requirements as applicable as described in this subsection. The Board reserves the right to reconsider the terms of probation based upon any extenuating circumstances.

(d) The Board will determine the reporting requirements for each probation and will include a list of Board probation requirements and schedule for completion of those requirements in which the Board may require the license holder to submit documentation including, but not limited to, survey plats, client lists, job assignments, proof of continuing education participation, restricted practice reports, and other documents concerning the probation to demonstrate compliance with the conditions of probation. As a condition of probation, the license holder shall accept that schedule deadlines are final.

(e) The Board will receive and date stamp documentation on the day received and track compliance with probation requirements for each probated suspension. The Board shall honor postmarks for date of submittal; however, if not received by the required deadline, the license holder shall have the burden of proof to demonstrate documentation was submitted by the schedule deadline.

(f) As a condition of probation, the Board may require the license holder to obtain additional continuing education in addition to the minimum requirements of §664.3 of this title (relating to Numerical Requirements for Continuing Education) and may prescribe formal classroom study, workshops, seminars, and other specific forms of continuing education.

(g) Failure to comply with probation requirements shall result in revocation of probation and reinstatement of the original sanction.

§661.102. Alternative Dispute Resolution for Personnel and Contracting Matters.

(a) It is the Board's policy to encourage the resolution and early settlement of all disputed matters, internal and external, through voluntary settlement procedures.

(b) The Executive Director [~~executive director~~] shall designate at least one employee of the Board to serve as the Board's alternative dispute resolution coordinator to:

(1) Coordinate [~~coordinate~~] the implementation of the Board's alternative dispute resolution policies;

(2) Serve [~~serve~~] as a resource for any training needed to implement the procedures for alternative dispute resolution; and

(3) Collect [~~collect~~] data concerning the effectiveness of these procedures, as implemented by the Board.

(c) The Board, a respondent, the Executive Director [~~executive director~~], or any other party involved in an internal or external disputed matter may request that the matter be resolved through any manner of alternative dispute resolution specified in Chapter 154, Civil Practice and Remedies Code, including mediation, arbitration, and moderated settlement conferences, or through the appointment of an ombudsman.

(d) The allocation of the costs of alternative dispute resolution is subject to negotiation and agreement between the parties. The party who requests alternative dispute resolution may be liable for the cost of any third-party mediator, moderator, arbitrator, or ombudsman and shall otherwise bear her or his own cost arising from alternative dispute resolution.

(e) Any resolution reached as a result of an alternative dispute resolution procedure is intended to be through the voluntary agreement of the parties. Any resolution that purports to bind the Board must be approved by the Board at a meeting subject to the Texas Open Meetings Act, Chapter 551, Government Code.

(f) The Board is subject to the Texas Public Information Act, Chapter 552, Government Code. Any written record, communication, or other material is confidential only to the extent provided by law and subject to the exemptions provided in that Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300255
Marcelino A. Estrada
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 239-5267

♦ ♦ ♦

22 TAC §§661.69, 661.70, 661.72, 661.73, 661.75, 661.77 - 661.80, 661.82 - 661.85, 661.91, 661.93

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Professional Land Surveying or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Professional Land Surveying (Board) proposes the repeal of §§661.69, 661.70, 661.72, 661.73, 661.75, 661.77 - 661.80, 661.82 - 661.85, 661.91, and 661.93, concerning Contested Cases.

The repeal is proposed to render the Board's Rules more consistent with current law. Government Code Chapter 2001, the Administrative Procedure Act, and State Office of Administrative Hearings rules set forth in the Texas Administrative Code govern the form and procedure for notice, motions, amendment of pleadings, hearing procedures, depositions, subpoenas, the

record, and appeals in a pending proceeding. Board rules on these topics are either outdated or do not add any useful requirements to the aforementioned sources of law and administrative procedure that govern contested case hearings.

Marcelino Estrada, Executive Director, has determined that for the first five-year period the repeal is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the rules.

Mr. Estrada has determined that for each year of the first five-year period the repeal is in effect there will be no local employment impact as a result of repeal of the rules.

Mr. Estrada has determined that for each of the first five years the rules are repealed and relocated, the anticipated public benefit will be that the Board's Rules will be more streamlined and consistent with current law. Mr. Estrada has determined that there will be no economic cost to individuals required to comply with the rules. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

Mr. Estrada has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and therefore does not constitute a taking under Texas Government Code §2007.043.

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by email at njackson@txls.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The repeal is proposed under Texas Occupations Code §1071.151; Government Code §§2001.051, 2001.052, 2001.056, 2001.057, 2001.058, 2001.060, 2001.081 - 2001.086, 2001.088, 2001.089, 2001.090, 2001.094 - 2001.103, 2001.144, 2001.145, 2001.146, and 2001.171 - 2001.178; and 1 TAC §§155.101, 155.103, 155.153, 155.155, 155.251, 155.301, 155.305, 155.307, 155.401, 155.405, 155.409, 155.423, 155.425, 155.429, 155.501, 155.503, 155.505, and 155.507.

No other sections are affected by the proposal.

§661.69. Motions.

§661.70. Amendments.

§661.72. Motions for Postponement, Continuance, Withdrawal, Dismissal of Other Matters before the Agency.

§661.73. Conduct of Hearings.

§661.75. Notice and Hearing.

§661.77. Dismissal without Hearing.

§661.78. Rules of Evidence.

§661.79. Documentary Evidence and Official Notice.

§661.80. Limitations on Number of Witnesses.

§661.82. Offer of Proof.

§661.83. Depositions.

§661.84. Subpoenas.

§661.85. Oral Argument.

§661.91. The Record.

§661.93. Appeals.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2013.

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Marcelino A. Estrada
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Texas Board of Professional Land Surveying
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CHAPTER 663. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND RULES OF CONDUCT

SUBCHAPTER A. GENERAL PRACTICE STANDARDS

22 TAC §§663.1, 663.3 - 663.6, 663.8 - 663.10

The Texas Board of Professional Land Surveying (Board) proposes amendments to §§663.1, 663.3 - 663.6, and 663.8 - 663.10, concerning General Practice Standards.

The amendments are proposed to make minor, non-substantive corrections to capitalization.

The proposed amendment to §663.1 clarifies that the standards of responsibility set forth in Chapter 663 are standards for a land surveyor's responsibility to be exercised in the performance of his/her professional practice. The amendments remove the aspirational suggestion that the professional practice of land surveying "should" be conducted with the highest degree of moral and ethical standards and replace the term "should" with the more definitive and obligatory "shall." The Board believes that this change will clarify its high expectations and enhance the regulated community's commitment to a higher level of professional responsibility and practice. The proposed amendments group together aspirational statements and statements of the Board's intent and interpretation of the rules and make clear that rule violations may result in a variety of disciplinary actions. The proposed amendment also requires a Firm offering land surveying services to notify service recipients of the Board's contact information by various alternative methods so that complaints, if any, can be directed to the Board.

The proposed amendment to §663.3 adds, in addition to a client or employer, the category "the public" as having an expectation of careful, responsible, and competent performance of professional land surveying services. The amendments reorganize the phrase "by education or experience" to closer proximity with the reference to services which a land surveyor is offering to provide. This amendment is intended to make clear that a judgment about qualifications to provide services should be based upon a land surveyor's education or experience to provide such services.

The proposed amendment to §663.4 adds, in addition to a client or employer, the category "the public" as having an expectation

of a professional land surveyor avoiding conflicts of interest. This amendment emphasizes that a professional land surveyor must protect the confidentiality of professional communications and land survey products. It also eliminates mere suggestion of action and creates an obligation to act in the event a land surveyor confronts a conflict of interest that would impair his/her independent judgment during contemplated employment, employment, or the performance of services.

Because of the frequency of complaints about the problem that this section addresses, the proposed amendment of §663.5 adds emphasis to the Board's expectation that a professional land surveyor will avoid allowing any person who is not registered or licensed under the Professional Land Surveying Practices Act to exert control over the performance of professional land surveying services.

The proposed amendment to §663.6 states in active voice the Board's expectation that a professional land surveyor will reasonably assist the Board in preventing and exposing, when a surveyor has personal knowledge, the unauthorized practice of land surveying.

The proposed amendment to §663.8 removes the aspirational "should" in the opening paragraph and replaces it with "shall," creating consistency with the paragraphs that follow and confirming the Board's expectation that a professional land surveyor will abide by state and local code and ordinance provisions.

The proposed amendment to §663.9 restates the meaning and significance of a land surveyor's use of his/her seal and signature on documents and clarifies that when using these, he/she is making certain representations to the public and is accepting professional responsibility for the work. The proposed amendment adds the requirement that a surveyor or the Firm shall retain records relating to the preparation of a land survey pursuant to the time period established by the land surveyors' statute of repose set forth in the Texas Civil Practice and Remedies Code.

The proposed amendment to §663.10 makes minor corrections to grammar and more precisely identifies the referenced "disciplinary rules" as provisions and requirements set forth within the Board rules.

Marcelino Estrada, Executive Director, has determined that for the first five-year period the amended sections are in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended sections.

Mr. Estrada has determined that for each year of the first five-year period the rules are in effect there will be no local employment impact as a result of adoption of the proposed rules.

Mr. Estrada has determined that for each year of the first five years the rules are in effect, the anticipated public benefit will be that the Board's Rules will emphasize its expectation of high ethical standards and professional responsibility and provide more precise guidance to individual surveyors and to land surveying Firms. Mr. Estrada has determined that there will be no economic cost to individuals required to be subject to the rules. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

Mr. Estrada has determined that this proposal does not constitute a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and therefore does not constitute a taking under Texas Government Code §2007.043.

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by email at njackson@txls.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §§1071.002, 1071.151, 1071.157, 1071.251, 1071.351, 1071.401, and 1071.504 and Texas Civil Practice and Remedies Code §16.011.

No other sections are affected by the proposal.

§663.1. Ethical Standards.

[~~(a)~~] Inasmuch as the practice of the land surveying profession is essential to the orderly use of our physical environment, and inasmuch as the technical work resultant thereof has important effects on the welfare, property, economy, and security of the public, the practice shall [~~should~~] be conducted with the highest degree of moral and ethical standards. And inasmuch as the state legislature has vested in the Board [~~board~~] the authority, power, and duty to establish and enforce standards of conduct and ethics for professional surveyors and licensed state land surveyors to ensure compliance with and enforcement of the Texas Board of Professional Land Surveying, the following standards of professional responsibility and rules of conduct are hereby promulgated and adopted by the Board [~~board~~].

(1) So that every applicant for registration as a professional land surveyor or licensed state land surveyor shall be fully aware of the great obligation and responsibility due the public, the standards of responsibility are promulgated by the Board. In furtherance of this intent, every registrant shall endorse and carry out the standards of responsibility.

(2) It is the responsibility of each registrant to notify the Board of any change of mailing address no later than five (5) business days after occurrence.

(3) Each Firm offering surveying services to the public shall notify consumers and service recipients of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board. This can be accomplished by:

(A) A sign prominently displayed in the place of business of each registrant offering professional land surveying services;

(B) On a bill for professional land surveying service;

(C) On each written contract for services; or

(D) On a Firm's website.

[~~(b) So that every applicant for registration as a professional land surveyor or licensed state land surveyor shall be fully aware of the great obligation and responsibility due the public, the standards of responsibility are promulgated by the board. In furtherance of this intent, every registrant should endorse the standards of responsibility.~~]

[~~(c) It is the responsibility of each registrant to notify the board of any change of mailing address as it occurs.~~]

[~~(d) Each firm offering surveying services to the public shall notify consumers and service recipients of the name, mailing address,~~

and telephone number of the board for the purpose of directing complaints to the board. This can be accomplished by:]

[(1) a sign prominently displayed in the place of business of each registrant offering professional land surveying services; or]

[(2) on a bill for professional land surveying service; or]

[(3) on each written contract for services.]

§663.3. Offer to Perform Services.

The client, [or]employer, or the public is entitled to a careful and competent performance of services. Competence in performance of services requires the exercise of proficiency, reasonable care, and diligence. Therefore, every effort should be made to remain proficient in a field of endeavor, and employment for services to be rendered should not be accepted unless such services can be competently performed. The registrant:

(1) Shall [shall] accurately and truthfully represent to any prospective client, [or] employer, or the public his/her capabilities and qualifications to perform the services to be rendered;

(2) Shall [shall] not offer to perform, nor perform, services for which he/she is not qualified by education or experience in any of the technical fields involved, [by education or experience,] without retaining the services of another who is so qualified; and

(3) Shall [shall] not evade his/her statutory responsibility nor his/her responsibility to a client, employer, and the public [or employer].

§663.4. Conflicts of Interests.

The acceptance of employment, or engagement to perform services, requires the faithful [discharge of duty and] performance of services, and [as well as] the avoidance of any conflict of interests. All dealings with a client, [or] employer, or the public, and all matters related thereto including the land survey product(s) shall [should] be kept in the closest confidence. Should an unavoidable conflict of interest arise, the client, [or] employer, or the public shall [should] be immediately informed of any and all circumstances, which may hamper or impair the quality of the services to be rendered. The registrant:

(1) Shall [shall] not agree to perform services for a client, [or] employer, or the public if there exists any significant financial or other interest that may be in conflict with the obligation to render a faithful discharge of such services, except with the full knowledge, approval, and consent of the client or employer and all other parties involved;

(2) Shall [shall] not continue to render such services without informing the client or employer, and all other parties involved, of any and all circumstances involved which may in any way affect the performance of such services, and then only with the full approval of the client or employer;

(3) Shall [shall] not perform, nor continue to perform services for a client, [or] employer, or the public if the existence of conflict of interest would impair independent judgment in rendering such services;

(4) Shall [shall] withdraw from employment at any time during such employment or engagement when it becomes apparent that it is not possible to faithfully discharge the duty and performance of services owed the client, [or] employer, or the public;

(5) Shall [shall] not accept remuneration from any party other than his/her client or employer for a particular project nor have any other direct or indirect financial interest in other services or phase of service to be provided for such project, unless the client or employer has full knowledge and so approves; and

(6) Shall [shall] keep inviolate the confidences of his/her client or employer, except as otherwise required in the rules of conduct.

§663.5. Representations.

The highest degree of integrity, truthfulness, and accuracy should be paramount in all dealings with, and representations to, others by not misleading in any way the other's understandings of personal qualifications or information regarding a project. The registrant:

(1) Shall [shall] not allow any [a] person, employee, employer, or supervisor, who is not registered or licensed under the Professional Land Surveying Practices Act to exert control over the end product of his/her professional land surveying work;

(2) Shall [shall] not indulge in publicity that is false, misleading, or deceptive;

(3) Shall [shall] not misrepresent the amount or extent of prior education or experience to any employer or client, nor to the Board [board];

(4) Shall [shall] not hold out as being engaged in partnership or association with any person or Firm [firm] unless there exists in fact a partnership or associations; and

(5) Shall [shall] not, without the knowledge and consent of his/her client, recommend to a client the services of another for the purpose of collecting a fee for himself for those services.

§663.6. Unauthorized Practice.

All registrants shall provide reasonable assistance to the Board in preventing the unauthorized practice of land surveying [should be given the board]. Unauthorized practice shall [should] not be aided in any way. The registrant:

(1) Shall [shall] make known to the Board [board] any unauthorized practice of which he/she has personal knowledge;

(2) Shall [shall] divulge to the Board [board] any information, of which he/she has personal knowledge, related to any unauthorized practice upon request of the Board [board] or its authorized representatives; and

(3) Shall [shall] not delegate responsibility to, nor in any way aid or abet, an unauthorized person to practice, or offer to practice.

§663.8. Adherence to Statutes and Codes.

Strict adherence to practice requirements of related sections of the statutes, the state code, and all local codes and ordinances shall [should] be maintained in all services rendered. The registrant:

(1) Shall [shall] abide by, and conform to, the registration and licensing laws of the state;

(2) Shall [shall] abide by, and conform to, the provisions of the state code and any local codes and ordinances not consistent with this Act. Any surveyor subdividing land into tracts subject to statutory requirements providing for an approval process by a governing body for such subdivision shall notify the individual whose intent it is to create the subdivision of the existence of the statutory requirements that pertain to and affect the development of the proposed subdivision prior to commencing the survey. It is recommended that this notification be in writing and a copy be [of which is] maintained within the surveyor's permanent records;[.]

(3) Shall [shall] not violate nor aid and abet another in violating a rule of conduct nor engage in any conduct that may adversely affect his/her fitness to practice;

(4) Shall [shall] not sign nor impress his/her seal or stamp upon documents not prepared by him/her or under his/her control or

knowingly permit his/her seal or stamp to be used by any other person; and[.]

(5) Shall [~~shall~~] not submit or request, orally or in writing, a competitive bid to perform professional surveying services for a governmental entity or political subdivision of the State of Texas unless specifically authorized by state law.

(A) For purposes of this section, the Board [~~board~~] considers competitive bidding to perform professional surveying services to include the submission of any monetary cost information in the initial step of selecting qualified professional land surveyors. Cost information or other information from which cost can be derived must not be submitted until the second step of negotiating a contract.

(B) This section does not prohibit competitive bidding in the private sector.

§663.9. Professional Conduct.

(a) The surveyor shall not offer or promise to pay or deliver, directly or indirectly, any commission, political contribution, gift, favor, gratuity, or reward as an inducement to secure any specific surveying work or assignment; provided, however, this rule shall not prevent a professional surveyor from offering or accepting referral fees or from discounting fees for services performed, with full disclosure to all interested parties. Further provided, however, a surveyor may pay a duly licensed employment agency its fee or commission for securing surveying employment in a salaried position.

(b) The surveyor shall not make, publish, or cause to be made or published, any representation or statement concerning his/her professional qualifications or those of his/her partners, associates, Firm [~~firm~~], or organization which is in any way misleading, or tends to mislead the recipient thereof, or the public concerning his/her surveying education, experience, specialization, or any other surveying qualification.

(c) The surveyor, in using his seal, signature, [~~public shall be provided every reason for relying upon the surveyor's seals, signatures,~~] or professional identification on [~~all~~] documents, plats, [~~or~~] maps, [~~surveyor's~~] reports, plans, or other land surveying services or products, is representing to the public [~~data on which they appear as a representation~~] that the surveyor [~~surveyors~~] whose [~~seals, signatures, or professional~~] identification appears [~~appear~~] thereon has[~~, have~~] personal knowledge thereof and accepts professional responsibility [~~that they are professionally responsible~~] therefor.

(d) The surveyor and/or the survey Firm shall maintain in a retrievable format all records and files pertaining to the preparation of a land survey document for a minimum of ten (10) years from the date of the document pursuant to §16.011 of the Texas Civil Practice and Remedies Code.

§663.10. Disciplinary Rules.

The land surveyor shall not:

(1) Violate [~~violate~~] any provision of the Professional Land Surveying Practices Act (the Act) or Board [~~disciplinary~~] rules thereof;

(2) Circumvent [~~circumvent~~] or attempt to circumvent any provision of the Act or Board [~~disciplinary~~] rules thereof through actions of another;

(3) Participate, [~~participate,~~] directly or indirectly, in any plan, scheme, or arrangement attempting to or having as its purpose the evasion of any provision of the Act and Board [~~disciplinary~~] rules;

(4) Fail [~~fail~~] to exercise reasonable care or diligence to prevent his/her partners, associates, or employees from engaging in conduct, which, if done by him, would violate any of the provisions of the Act or Board rules;

(5) Engage [~~engage~~] in any conduct that discredits or attempts to discredit the profession of surveying;

(6) Permit [~~permit~~] or allow any professional identification, seal, form, [~~or~~] business name, or service to be used or made use of, directly or indirectly, in [~~or~~] any manner whatsoever, so as to [~~make possible to~~] create the opportunity for the unauthorized practice of professional surveying by any person, [~~firm,~~] or Firm, [~~corporation~~] in this state;

(7) Perform [~~perform~~] any acts, allow any omission, or make any assertions or representation which may be fraudulent, deceitful, or misleading, or which in any manner whatsoever, tend to create a misleading impression; or

(8) Aid [~~aid~~] or abet, directly or indirectly, any unlicensed person in connection with the unauthorized practice of professional surveying or any Firm [~~firm~~] or corporation in the practice of professional surveying unless carried on in accordance with the Act and Board rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2013.

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Marcelino A. Estrada
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 239-5267

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SUBCHAPTER B. PROFESSIONAL AND TECHNICAL STANDARDS

22 TAC §§663.13 - 663.20

The Texas Board of Professional Land Surveying (Board) proposes amendments to §663.13 and §§663.15 - 663.20; and new §663.14, concerning Professional and Technical Standards.

The amendments propose to make minor, non-substantive corrections to capitalization and formatting.

The proposed amendment to §663.13 inserts the word "land" before the word "surveying," to clarify this term as opposed to marine surveying, traffic surveying, or other endeavors where the generic term "surveying" may be in use. The proposed amendment clarifies that the Board considers any survey which delineates, segregates, separates, or partitions any interest in real property to be subject to the standards of the Board Rules except when such a document is prepared as a subdivision plat as provided in proposed new §663.14.

The Board proposes new §663.14. The language for the new section is similar to the language in existing §663.20. The new section states that the Board will consider an applicant's or a registrant's criminal convictions as they may relate to the practice of professional land surveying. The proposed section does not include §663.20(d), which lists specific crimes that the Board believes are related to land surveying, because this list will be reevaluated and likely expanded as the Board works to create its

Guidelines pursuant to §53.025 of the Texas Occupations Code. The proposed section also increases the fee for responding to a request for a history evaluation to determine a person's eligibility for registration from fifty dollars ($50) to one hundred dollars ($100).

The proposed amendment to §663.15 renames the rule as Precision and Accuracy. The amended rule is proposed to eliminate specific positional tolerance requirements which were determined by surveying means and methods that the Board now considers outmoded. The proposed amendment acknowledges that more current methods and equipment, such as GPS, for example, are presently employed by land surveyors to attain accuracy and precision in measurement.

The proposed amendment to §663.16 is proposed to more clearly state the specific principles a land surveyor shall rely upon, and specific actions a land surveyor shall take, in delineating a boundary line or reporting a boundary location based on opinion when physical monumentation is absent.

The proposed amendment to §663.17 is proposed to clarify the requirement of sufficiency of monuments that a land surveyor sets. The amended rule adds the requirement of an adequate quantity of monuments that the Board expects a land surveyor to leave as physical monuments on which the public can reasonably rely in identifying the property or premises being surveyed. The amendments also emphasize the importance of a land surveyor selecting monumentation that is adequate to withstand the forces of nature in the location where it is placed. The rule amendments eliminate redundant terms all of which are considered to constitute property or boundary corners. The proposed amendments eliminate redundant requirements contained in other rules or clarified by definitions contained in the Board's rules. The proposed amendments require any metes and bounds description to be tied by relative position to a boundary corner identified in a recorded document which describes the property to be affected by the easement.

The proposed amendment to §663.18 is proposed to highlight the significance of the land surveyor's certification and emphasize its proper handling and use. The proposed amendments state the expectation that the land surveyor will maintain control and possession of his/her seal. The proposed amendments require personal use of the professional's seal and signature and specify that such certifications should be applied only to final land surveying documents. The proposed amendments require that a land surveyor's preliminary documents bear no seal or signature and state on the face that the document is not to be recorded or relied upon as a final document. The proposed amendments remove the requirement that a surveyor's certification be used only when the surveyor has personal factual knowledge. This proposed change acknowledges that there are instances when the surveyor may have to rely on other authoritative sources of information.

The proposed amendment to §663.19 proposes to rename the rule as Survey Drawing/Written Description/Report. The amended section is proposed to make adjustments because the term "report" has now, with the proposed rule amendments, been defined in the Board's definitions of terms. The proposed amendment also recognizes updated technologies utilized by land surveyors and expands the requirement of placing a Firm name and registration number on a survey drawing where appropriate.

The proposed amendment to §663.20 deletes all of the existing text, because the majority of the text has been proposed as new §663.14. The amendment renames the section "Subdivision Plat" and adds new text that states the Board considers any survey which delineates, segregates, separates, or partitions any interest in real property to be subject to the standards of the Board rules except when such a document is prepared as a subdivision plat delineating the perimeter boundary. In such case, the amendment provides that the surveyor must abide by state codes and any pertinent local codes or ordinances.

Marcelino Estrada, Executive Director, has determined that for the first five-year period the amended and new sections are in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended and new sections.

Mr. Estrada has determined that for each year of the first five-year period the rules are in effect there will be no local employment impact as a result of adoption of the proposed rules.

Mr. Estrada has determined that for each year of the first five years the rules are in effect, the anticipated public benefit will be that the Board's rules will be modernized, will provide more precise guidance to individual surveyors and to land surveying Firms in their professional practice, and will emphasize the proper handling and use of a land surveyor's professional certifications so that the public may more confidently rely on the certified survey product. Mr. Estrada has determined that there will be no economic cost to individuals required to be subject to the rules. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

Mr. Estrada has determined that this proposal does not constitute a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and therefore does not constitute a taking under Texas Government Code §2007.043.

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by email at njackson@txls.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendments and new section are proposed under Texas Occupations Code §§53.022, 53.023, 53.025, and 1071.151.

No other sections are affected by the proposal.

§663.13. Introduction.

The Board establishes these minimum standards of practice to better serve the general public in regulating the practice of professional land surveying in Texas. Professional land surveying performed in Texas, unless otherwise specifically exempted herein, shall meet or exceed the requirements of these standards. The Board considers any survey, the purpose of which is to delineate, segregate, separate, or partition any interest in real property of any kind, under these standards except when prepared pursuant to §663.16 of this title (relating to Boundary Construction).

§663.14. Criminal Convictions.

(a) Pursuant to Title 2, Texas Occupations Code, Chapter 53, the following apply for registered professional land surveyors and applicants.

(1) The registrant shall notify the Board in writing within 90 days of any conviction of any crime under the laws of the United States, or any state, territory or country thereof, which is a felony or a misdemeanor, whether related to the practice of surveying or not.

(2) The applicant will be required to state on a form provided by the Board, whether he or she has ever been convicted of a felony or a misdemeanor.

(3) Registrants or applicants are required to provide a summary of the conviction in sufficient detail to allow the Board to determine if it relates to the practice of professional land surveying or application for registration.

(4) If the Board determines the conviction relates to the profession of land surveying, the Board staff will obtain sufficient details of the conviction to allow the Board to determine the effect of the conviction on the registrant's practice of surveying or the applicant's eligibility for registration.

(b) In determining whether a criminal conviction is applicable to a registrant's surveying practice or an applicant's application, the Board will consider the following:

(1) The nature and seriousness of the crime;

(2) The relationship of the crime to the purposes for requiring a license to practice land surveying;

(3) The extent to which a license or registration might offer an opportunity to engage in further criminal activity of the same type as that which the individual had been previously involved; and

(4) The relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a Registered Professional Land Surveyor.

(c) In addition to the factors that the Board will consider under subsection (b) of this section, the Board shall consider the following in determining a person's fitness to perform the duties of a Registered Professional Land Surveyor:

(1) Extent and nature of the individual's past criminal activity;

(2) The age of the individual at the time the crime was committed, and the amount of time that has elapsed since the last criminal activity;

(3) The conduct and work activity of the individual prior to and following the criminal activity;

(4) Evidence of rehabilitation; and

(5) Other evidence of fitness to practice as a professional land surveyor.

(d) The application of any applicant deemed ineligible for registration because of a prior criminal conviction will be proposed for rejection and the applicant will be provided the following information in writing:

(1) The reason for rejecting the application;

(2) Notice of the administrative procedure used to conduct an informal conference and contested case hearing; and

(3) Notice that upon exhausting of the administrative appeal, an action may be filed in a district court of Travis County for review of the evidence presented to the Board and its decision. The person must begin the judicial review by filing a petition with the court within 30 days after the Board's decision is final.

(e) The Board shall revoke the certificate of registration of any registrant incarcerated or jailed as a result of conviction for a felony. The certificate of registration of any registrant shall also be revoked for felony probation revocation, revocation of parole, or revocation of mandatory supervision regardless of the date of the original conviction.

(f) The Board may revoke the certificate of registration of any registrant convicted of a misdemeanor or a felony if the crime directly relates to the duties and responsibilities as a professional land surveyor.

(1) Any registrant whose certificate of registration has been revoked under the provisions of this subsection will be advised in writing of the right to apply for registration. The application criteria are established in subsections (b) and (c) of this section.

(2) Any registrant whose certificate of registration has been revoked under the provisions of this subsection and who has exhausted administrative appeals may file an action in a district court of Travis County for review of the evidence presented to the Board and its decision. The person must begin the judicial review by filing a petition with the court within 30 days after the Board's decision or the decision is not subject to appeal.

(g) A person is convicted when an adjudication of guilt on an offense is entered against that person by a court of competent jurisdiction whether or not:

(1) The sentence is subsequently probated and the person is discharged from probation or community supervision; or

(2) The accusation, complaint, information or indictment against the person is dismissed and the person is released from all penalties and disabilities resulting from the offense.

(h) Imposition of deferred adjudication community supervision is not a conviction.

(i) Persons enrolled or planning to enroll in an educational program in preparation for applying to become a Registered Professional Land Surveyor may request a history evaluation to determine their eligibility for registration. It is the responsibility of the petitioner to obtain and send to the Board for each criminal offense in his or her criminal history (the entire court record), including final court orders noting sentencing information, conditions of probation, revocation of or release from probation, and any other information relating to the petitioner's criminal history, or requested by the Board, along with any recommendations of the prosecution, and/or law enforcement and/or correctional authorities regarding the offense(s). The petitioner shall also furnish documentation acceptable to the Board of prior/current employment status, evidence of court-ordered and/or voluntary rehabilitation, evidence of good conduct in their community, and evidence of payment of all outstanding court costs, supervision fees, fines, and restitution as ordered in the criminal cases in which they have been convicted, placed on deferred adjudication, community supervision and/or deferred disposition. The petitioner shall submit a fee in the amount of one hundred dollars ($100) for the purpose of responding to the request.

§663.15. Precision and Accuracy.

Survey measurements shall be made with equipment and methods of practice capable of attaining the accuracy and tolerances required by the professional land surveying services being performed.

~~[(a) The actual relative location of corner monuments found or set within the corporate limits of any cities in Texas shall be reported within a positional tolerance of 1:10,000 + 0.10 feet.]~~

[(b) The actual relative location of corner monuments found or set within the extraterritorial jurisdiction (ETJ) of any cities in Texas shall be reported within a positional tolerance of 1:7,500 + 0.10 feet.]

[(c) The actual relative location of corner monuments found or set in all rural areas outside extraterritorial jurisdiction areas of all cities in Texas shall be reported within a positional tolerance of 1:5,000 + 0.10 feet.]

[(d)] Areas, if reported, shall be produced, recited, and/or shown only to the least significant number compatible with the precision of closure.

[(e) Survey measurement shall be made with equipment and methods of practice capable of attaining the tolerances specified by these standards.]

[(f) Positional tolerance of any monument is the distance that any monument may be mislocated in relation to any other monument cited in the survey.]

§663.16. Boundary Construction.

[(a)] When delineating a [property or] boundary line as an integral portion of a survey, the land surveyor shall:

(1) Respect [respect] junior/senior [property] rights for boundary retracement; [,]

(2) Follow the footsteps of the original land surveyor;[,]

(3) Follow the documented records of the land title affecting the boundaries being surveyed; [the record, the intent as evidenced by the record, the proper application of the rules of dignity or the priority of calls, and applicable statutory and case law of Texas.]

(A) Rely on the appropriate deeds and/or other documents including those for adjoining parcels for the location of the boundaries of the subject parcel(s).

[(b) Appropriate deeds and/or other documents including those for adjoining parcels shall be relied upon for the location of the boundaries of the subject parcel(s).]

(B) [(c)] A land surveyor assuming the responsibility of performing a land survey also assumes the responsibility for such research of adequate thoroughness to support the determination of the location of the [intended] boundaries of the land being [parcel] surveyed. The land surveyor may rely on record data related to the determination of boundaries furnished for the registrants' use by a qualified provider, provided the registrant reasonably believes such data to be sufficient and notes, references, or credits the documentation by which it is furnished.

(C) [(d)] All boundaries shall be connected to identifiable physical monuments related to corners of record dignity. In the absence of such monumentation the land surveyor's opinion of the boundary location shall be supported by other appropriate physical evidence, which shall be explained in a land surveyor's sketch or written report.

(4) Follow the intent of the boundary location as evidenced by the record;

(5) Respect the proper application of the rules of dignity (priority) of calls, and applicable statutory and case law of Texas.

§663.17. Monumentation.

(a) All monuments set by registered professional land surveyors shall be set at sufficient depth to retain a stable and distinctive location and be of sufficient size to withstand the deteriorating forces of nature and shall be of such material that in the land surveyor's judgment will best achieve this goal.

(b) When delineating a property or boundary line as an integral portion of a survey (survey being defined in the Act, §1071.002(6) or (8)), the land surveyor shall set, or leave as found, an adequate quantity of monuments of a [sufficient,] stable and reasonably permanent nature [survey markers] to represent or reference the property or boundary corners[, angle points, and points of curvature or tangency].

[(1)] All survey markers shall be shown and described with sufficient evidence of the location of such markers on the land surveyors' drawing, written description or report. [surveyors' plat. If the land surveyor shall prepare a written description of the surveyed premise, he/she shall include in that written description:]

[(A) reference to and a description of the survey markers as shown on the plat; and]

[(B) the seal and signature of a registered or licensed land surveyor.]

[(2) In addition, the land surveyor may furnish an electronic copy of a written description provided that the text is verbatim to that on the certified document retained in the land surveyor's file.]

(c) All metes and bounds descriptions [description] prepared as an exhibit to be used in [for] easements shall be tied to corners [physical monuments] of record related to the boundary of the affected tract.

(d) Where practical, all monuments set by a Professional Land Surveyor [Surveyors] to delineate or witness a boundary corner shall be marked in a way that is traceable to the responsible registrant or associated employer.

§663.18. Certification.

(a) The Registered Professional Land Surveyor shall personally [registered professional land surveyor shall] apply his/her seal and signature only to final [all] documents released to the public representing professional land surveying as defined in the Act. The professional land surveyor shall maintain control and possession over his/her seal at all times.

(b) If the land surveyor certifies, or otherwise indicates, that his/her product or service meets a standard of practice in addition to that promulgated by the Texas Board of Professional Land Surveying, then the failure to so meet both standards may be considered by the Board [board], for disciplinary purposes, to be misleading the public.

(c) Preliminary documents released from a land surveyor's control shall identify the purpose of the document, the land surveyor of record and the land surveyor's registration number, and the release date. Such preliminary documents shall not be signed or sealed and shall bear the following statement in the signature space or upon the face of the document: "Preliminary, this document shall not be recorded for any purpose and shall not be used or viewed or relied upon as a final survey document".["] Preliminary documents released from the land surveyor's control which include this text in place of the land surveyor's signature need not comply with the other minimum standards promulgated in this chapter.

(d) A land surveyor shall certify only to factual information that the land surveyor has [personal] knowledge of or to information within his professional expertise as a land surveyor unless otherwise qualified.

(e) Registered professional land surveyors may certify, using the registrant's signature and official seal, services which are not within the definition of professional land surveying as defined in the Act, provided that such certification does not violate any Texas or federal law.

§663.19. Survey Drawing/Written [Plat]/Description/Report.

[~~For the purposes of these rules the word "report" shall mean any or all of the following survey plat, descriptions, or written narratives.~~]

(a) [~~(1)~~] All reports shall delineate the relationship between record monuments and the location of the boundaries surveyed;[~~,~~] such relationship shall be shown on the survey drawing [~~plat~~], if a drawing [~~plat~~] is prepared, and/or separate report and recited in the description with the appropriate record references recited thereon and therein.

(b) [~~(2)~~] Every description prepared for the purpose of defining boundaries shall provide a definite and unambiguous identification of the location of such boundaries and shall describe all [~~pertinent~~] monuments found or placed.

[~~(3) Every survey plat prepared shall be to a convenient scale and shall provide a definite and unambiguous representation of the location of the surveyed land according to its record description. Where material discrepancies are found between the record and the conditions discovered, the land surveyor shall apprise his/her client in the following manner.~~]

[~~(A) If a plat of survey is prepared, the land surveyor shall:~~]

~~*(i)* make specific reference to the discrepancy on the plat of survey; or~~]

~~*(ii)* make a general reference to the discrepancy on the plat of survey and a specific reference to a report of survey which more specifically describes the discrepancy.~~]

[~~(B) If a survey plat is not prepared, the land surveyor shall notify his/her client of any material discrepancy by report of survey or other written notice.~~]

(c) [~~(4)~~] Courses shall be referenced by notation upon the survey drawing to an identifiable and [~~existing physically~~] monumented line or an established geodetic system for directional control [~~or oriented to a valid published reference datum and shall be clearly noted upon any report, survey plat or other written instrument~~].

(d) [~~(5)~~] The survey drawing [~~plat~~] shall bear the Firm [~~firm~~] name and Firm Registration Number, the[~~,~~] land surveyor's name, address, and phone number who is [~~of the land surveyor~~] responsible for the land survey, his/her official seal, his/her original signature (see §661.46 of this title (relating to Seal and Oath [~~Stamps~~])), and date surveyed.

(e) [~~(6)~~] Boundary monuments found or placed by the land surveyor shall be described upon the survey drawing [~~plat, including those controlling monuments to which the survey may be referenced~~]. The land surveyor shall note upon the survey drawing, [~~plat~~] which monuments were found, [~~and~~] which monuments were placed as a result of his/her survey, and other monuments of record dignity relied upon to establish the corners of the property surveyed.

(f) [~~(7)~~] A reference shall be cited on the drawing and prepared description, if appropriate, [~~plat~~] to the record instrument that defines the location of adjoining boundaries. [~~The cited instrument need not be the current ownership, but shall be the document containing the description of the boundaries being re-established.~~]

[~~(8) When appropriate, reference shall be cited in the prepared description to the record instrument that defines the location of adjoining boundaries. The cited instrument need not be the current ownership, but shall be the document containing the description of the boundaries being re-established.~~]

(g) [~~(9)~~] If any report consists of more than one part, each part shall note the existence of the other part or parts.

(h) [~~(10)~~] If a land surveyor provides a written narrative in lieu of a drawing/sketch [~~Plat/sketch/drawing~~] to report the results of a survey, the written narrative shall contain sufficient information to demonstrate the survey was conducted in compliance with the Act and rules of the Board.

§663.20. Subdivision Plat [~~Criminal Convictions~~].

When submitting a subdivision plat to a Political Subdivision of this state for review and recording, the surveyor shall apply and adhere to the rules of the Texas Board of Professional Land Surveying when establishing or delineating the perimeter boundary of the purposed subdivision. The surveyor shall abide by, and conform to the provisions of the state code and any local codes and ordinances as to any other platting requirements.

[~~(a) Pursuant to Title 2, Occupations Code, Chapter 53, the following apply for registered professional land surveyors and applicants.~~]

[~~(1) The registrant shall notify the Board in writing within 90 days of any conviction of any crime under the laws of the "United States, or any state, territory or country thereof, which is a felony or a misdemeanor, whether related to the practice of surveying or not.~~]

[~~(2) The applicant will be required to state on a form provided by the board, whether he or she has ever been convicted of a felony or a misdemeanor.~~]

[~~(3) Registrants or applicants are required to provide a summary of the conviction in sufficient detail to allow the Board to determine if it is applicable to the practice of professional land surveying or application for registration.~~]

[~~(4) If the Board determines the conviction is applicable, the Board staff will obtain sufficient details of the conviction to allow the Board to determine the effect of the conviction on the registrant's practice of surveying or the applicant's eligibility for registration.~~]

[~~(b) In determining whether a criminal conviction is applicable to a registrant's surveying practice or an applicant's application, the Board will consider the following:~~]

[~~(1) the nature and seriousness of the crime;~~]

[~~(2) the relationship of the crime to the purposes for practicing surveying;~~]

[~~(3) the extent to which a registrant might offer an opportunity to engage in further criminal activity of the same type as that which the individual had been previously involved; and~~]

[~~(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a professional land surveyor.~~]

[~~(c) In addition to the factors that may be considered under subsection (b) of this section, the Board shall consider the following:~~]

[~~(1) extent and nature of the individual's past criminal activity;~~]

[~~(2) the age of the individual at the time the crime was committed, and the amount of time that has elapsed since the last criminal activity;~~]

[~~(3) the conduct and work activity of the individual prior to the following the criminal activity;~~]

[~~(4) evidence of rehabilitation; and~~]

[~~(5) other evidence of fitness to practice as a professional land surveyor.~~]

[(d) Crimes relating to the practice of surveying include, but are not limited to the following:]

[(1) criminal negligence in the practice of surveying;]

[(2) soliciting, offering, giving or receiving any form of bribe in the practice of surveying;]

[(3) the unauthorized use of property, funds or proprietary information belonging to another in the practice of surveying;]

[(4) acts relating to the acquisition, use or dissemination of confidential information related to surveying; and]

[(5) any violation as an individual or as a consenting party of any provision of the Professional Land Surveying Practices Act (Title 6, Occupations Code, Subtitle C).]

[(e) The application of any applicant deemed ineligible for registration because of a prior criminal conviction will be proposed for rejection and the applicant will be provided the following information in writing:]

[(1) the reason for rejecting the application;]

[(2) notice of the administrative procedure used to conduct an informal conference and contested case hearing to show compliance with all requirements of the law for registration as a professional surveyor; and]

[(3) notice that upon exhausting of the administrative appeal, an action may be filed in a district court of Travis County for review of the evidence presented to the Board and its decision. The person must begin the judicial review by filing a petition with the court within 30 days after the Board's decision is final.]

[(f) The Board shall revoke the certificate of registration of any registrant incarcerated or jailed as a result of conviction for a felony. The certificate of registration of any registrant shall also be revoked for felony probation revocation, revocation of parole, or revocation of mandatory supervision regardless of the date of the original conviction.]

[(g) The Board may revoke the certificate of registration of any registrant convicted of a misdemeanor or a felony if the crime directly relates to the duties and responsibilities as a professional surveyor.]

[(1) Any registrant whose certificate of registration has been revoked under the provisions of this subsection will be advised in writing of the right to apply for registration. The application criteria are established in subsections (b) and (c) of this section.]

[(2) Any registrant whose certificate of registration has been revoked under the provisions of this subsection and who has exhausted administrative appeals, may file an action in a district court of Travis County for review of the evidence presented to the Board and its decision. The person must begin the judicial review by filing a petition with the court within 30 days after the Board's decision or the decision is not subject to appeal.]

[(h) A person is convicted when an adjudication of guilt on an offense is entered against that person by a court of competent jurisdiction whether or not:]

[(1) the sentence is subsequently probated and the person is discharged from probation or community supervision; or]

[(2) the accusation, complaint, information or indictment against the person is dismissed and the person is released from all penalties and disabilities resulting from the offense.]

[(i) Imposition of deferred adjudication community supervision is not a conviction.]

[(j) Persons enrolled or planning to enroll in an educational program in preparation for applying to become a Registered Professional Land Surveyor may request a history evaluation to determine their eligibility for registration. It is the responsibility of the petitioner to obtain and send to the Board for each criminal offense in his or her criminal history (the entire court record), including final court orders noting sentencing information, conditions of probation, revocation of or release from probation, and any other information relating to the petitioner's criminal history, or requested by the Board, along with any recommendations of the prosecution, and/or law enforcement and/or correctional authorities regarding the offense(s). The petitioner shall also furnish documentation acceptable to the Board of prior/current employment status, evidence of court-ordered and/or voluntary rehabilitation, evidence of good conduct in their community, and evidence of payment of all outstanding court costs, supervision fees, fines, and restitution as ordered in the criminal cases in which they have been convicted, placed on deferred adjudication, community supervision and/or deferred disposition. The petitioner shall submit a fee of $50 for the purpose of responding to the request.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300260
Marcelino A. Estrada
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 239-5267

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CHAPTER 663. STANDARDS OF RESPONSIBILITY AND RULES OF CONDUCT

SUBCHAPTER A. GENERAL PRACTICE STANDARDS

22 TAC §663.2, §663.7

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Board of Professional Land Surveying or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Professional Land Surveying (Board) proposes the repeal of §663.2 and §663.7, concerning General Practice Standards. The repeals are proposed as a matter of reorganization in the case of §663.2 and, in the case of §663.7, the repeal is proposed to eliminate redundancies.

The proposed repeal of §663.2 is necessary because the Board believes that the substance of the rule should be a part of the amendments to §663.1. Proposed §663.1 will contain the substance of §663.2 proposed for repeal. The proposed reorganization groups together statements of the Board's expectations with regard to ethical standards and the intent of the general practice standards expressed in the rules. The Board proposes the repeal of §663.7 as duplicative of other provisions in the Board rules.

Marcelino Estrada, Executive Director, has determined that for the first five-year period the rules are repealed there will be no

additional cost to state or local governments as a result of the repeal.

Mr. Estrada has determined that for each year of the first five-year period the rules are repealed there will be no local employment impact as a result of the repeal.

Mr. Estrada has determined that for each year of the first five years the rules are repealed, the anticipated public benefit will be that the Board's Rules will emphasize its expectation of high ethical standards and professional responsibility and provide more precise guidance to individual surveyors and to land surveying Firms. Mr. Estrada has determined that there will be no economic cost to individuals required to be subject to the rules proposed for repeal. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

Mr. Estrada has determined that this proposal does not constitute a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and therefore does not constitute a taking under Texas Government Code §2007.043.

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by email at njackson@txls.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The repeals are proposed under Texas Occupations Code §§1071.002, 1071.151, and 1071.401.

No other sections are affected by the proposal.

§663.2. Intent.

§663.7. Maintenance of Standards.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300259
Marcelino A. Estrada
Executive Director
Texas Board of Professional Land Surveying
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For further information, please call: (512) 239-5267

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CHAPTER 664. CONTINUING EDUCATION

22 TAC §664.4

The Texas Board of Professional Land Surveying (Board) proposes amendments to §664.4, concerning Continuing Education. The amendments propose to make minor, non-substantive corrections to capitalization and grammar. The amendments also propose to add professional development categories providing service and activities that the Board may accept and approve for continuing education credit.

Marcelino Estrada, Executive Director, has determined that for the first five-year period the amended section is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended section.

Mr. Estrada has determined that for each year of the first five-year period the rule is in effect there will be no local employment impact as a result of adoption of the proposed rule.

Mr. Estrada has determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be that the Board's rules will provide more opportunity for persons who are working closely with the profession as a Board member or Board employee to attain continuing education credit through his/her service. Mr. Estrada has determined that there will be no economic cost to individuals required to be subject to the rule. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

Mr. Estrada has determined that this proposal does not constitute a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and therefore does not constitute a taking under Texas Government Code §2007.043.

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by email at njackson@txls.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §1071.151 and §1071.301.

No other sections are affected by the proposal.

§664.4. Types of Acceptable Continuing Education.

Continuing education courses and professional development undertaken by a registrant shall be acceptable if the activity is approved by the Board [~~board~~] and falls in one or more of the following categories:

(1) Appointment [~~appointment,~~ ~~and~~] membership, or service on the Board or employment by the Board [~~board~~];

(2) Completion [~~completion~~] of undergraduate or graduate academic courses with a passing grade in areas supporting development of skill and competence in professional land surveying at an institution which is accredited by ABET, Southern Association of Colleges and Schools or an equivalent;

(3) Teaching [~~teaching~~] or consultation in programs such as institutes, seminars, workshops which provide increased professional knowledge related to the practice of professional land surveying;

(4) Participation [~~participation~~] in those sections of programs (e.g., institutes, seminars, workshops, and conferences) which provide increased professional knowledge related to the practice of professional land surveying and are conducted by persons qualified within

their respective professions by appropriate state licensure or certification where state licensure or certification exists, or in states outside of Texas where licensure or certification does not exist by completion of a graduate degree and certification by their respective professional associations;

(5) Author [~~author~~] of a technical paper relating to professional land surveying published in a Board [~~board~~] approved publication;

(6) Appointment [~~appointment~~] to and active participation by non-Board [~~board~~] members on a committee of the Board [~~board~~];

(7) Satisfactory [~~satisfactory~~] completion of scheduled assignments in a correspondence course;

(8) Meetings [~~meetings~~] and activities such as in-service [~~inservice~~] programs which are required as a part of one's job; and have been approved by the Board [~~board~~];

(9) A [a] maximum of four (4) hours of self-directed study in a topic related to the practice of surveying.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2013.

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Marcelino A. Estrada
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CHAPTER 665. EXAMINATION ADVISORY COMMITTEES

22 TAC §§665.1 - 665.6, 665.8 - 665.10

The Texas Board of Professional Land Surveying (Board) proposes amendments to §§665.1 - 665.6, 665.8, and 665.9; and new §665.10, concerning Examination Advisory Committees.

The amendments propose to make minor, non-substantive corrections to capitalization and grammar.

The proposed amendment to §665.3 removes the limitation providing that an advisory committee member is not eligible to serve more than two consecutive terms.

The proposed amendment to §665.4 states explicitly that a simple majority of the membership of a committee constitutes a quorum. The proposed amendment clarifies that grounds for removal from the committee because of absences from more than half of the committee and subcommittee meetings in a calendar year or absences from three consecutive meetings are qualified to state that the grounds for removal do not apply unless the described absences are without cause.

The Board proposes new §665.10, concerning Texas Guaranteed Student Loan Corporation Defaulters. The proposed new section is a matter of reorganization and restores the rule that is currently located at §661.58 of the Board's rules. Pursuant to statute, the rule provides that student loan defaulters identified by the Texas Guaranteed Student Loan Corporation are precluded from having their professional land surveying license renewed under certain circumstances.

Marcelino Estrada, Executive Director, has determined that for the first five-year period the amended and new sections are in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended and new sections.

Mr. Estrada has determined that for each year of the first five-year period the rules are in effect there will be no local employment impact as a result of adoption of the proposed rules.

Mr. Estrada has determined that for each of the first five years the rules are in effect, the anticipated public benefit will be that the Board's rules will aid the Board in carrying out its statutorily-mandated tasks.

Mr. Estrada has determined that there will be no economic cost to individuals required to be subject to the rules. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

Mr. Estrada has determined that this proposal does not constitute a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and therefore does not constitute a taking under Texas Government Code §2007.043.

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by email at njackson@txls.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendments and new section are proposed under Texas Occupations Code §1071.151 and §1071.552 and Texas Education Code §57.491.

No other sections are affected by the proposal.

§665.1. Introduction.

The Board shall establish examination advisory committees for the purpose of developing and scoring examinations. Committees will be established to write exam questions, review selected exams for accuracy and resolution time and determine examination scores. Advisory committees will be responsible for developing and scoring examinations that will ensure a registrant's ability to protect the public safety, welfare and property. The goal of the committees will be to insure that only competent candidates pass the examination. The committees are established under the Professional Land Surveying Practices Act, [~~Section~~] §1071.552, which allows the Board to establish advisory committees. Except as provided by [~~Section~~] §1071.555 the committees are subject to Texas Government Code, Chapter 2110, concerning state agency advisory committees. The committee shall carry out any other tasks given to the committees by the Board [~~board~~].

§665.2. Size, Quorum and Qualifications.

(a) Each committee shall be composed of an odd number of not less than nine [~~9~~] members from as varied geographic and practice areas as possible;[~~,~~] committees will contain a minimum of:

(1) Two [~~two~~] members who have been registered less than seven years; [~~and~~]

(2) Two [~~two~~] members who have been registered between seven [~~7~~] and 15 years; and

(3) Five [~~five~~] members who have been registered more than 15 years.

(b) A simple majority of the membership of each committee constitutes a quorum.

(c) Existing members shall continue to serve until the Board [~~board~~] appoints members under the new composition.

(d) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, is absent from at least three consecutive committee meetings or is found to have practiced in violation of the Professional Land Surveying Practices Act and/or Board rules [~~Rules of the Board~~]. The committee chair will notify the Board [~~board~~] of such vacancies.

(e) Committee members must be currently registered and familiar with requirements for and capabilities of candidates who are minimally qualified to practice.

§665.3. Process of Appointment.

The Board will appoint advisory committee members pursuant to the qualifications listed in this section [~~Section~~]. All appointments made under this section [~~Section~~] shall be made without regard to race, creed, sex, religion or national origin. A member of the committee may be appointed to succeed him or herself[~~, except that no member shall be eligible to serve more than two consecutive terms~~].

§665.4. Terms of Office.

(a) The term of office of each member shall be six years. Members shall serve after expiration of their terms until a replacement is appointed.

(b) Members shall be appointed for staggered terms so that the terms of an equivalent number of members will expire on August 31st of each even-numbered year.

(c) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(d) The chair of the Board [~~board~~] shall appoint a chair and vice chair of each committee. Each officer may holdover until his or her replacement is appointed by the chair of the Board [~~board~~].

(e) The advisory committee chair shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the Board [~~board~~]. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(f) The advisory committee vice chair shall perform the duties of the chair in case of the absence or disability of the presiding officer. In case the office of chair becomes vacant, the vice chair will serve until a successor is appointed to complete the unexpired portion of the term.

(g) Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned. A member shall notify the presiding officer or appropriate Board [~~board~~] staff if he or she is unable to attend a scheduled meeting.

(h) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent without cause from more than half of the committee and subcommittee meetings during a calendar year, or is absent without cause from at least three consecutive committee meetings.

(i) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(j) Staff support for the committee shall be provided by the Board [~~board~~].

(k) Any action taken by the committee must be approved by a simple majority vote of the members present once quorum is established.

(l) Each member shall have one vote.

(m) The committee may establish subcommittees as necessary to assist the committee in carrying out its duties. The chair shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairs. Subcommittees shall meet when called by the subcommittee chair or when so directed by the committee.

§665.5. Non-binding Statements.

The Board [~~board~~] and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the Board [~~board~~] or committee.

§665.6. Reimbursement for Expenses.

In accordance with the requirements set forth in the Texas Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) A committee member who is an employee of a state agency may not receive reimbursement for expenses from the Board [~~board~~].

(2) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(3) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by Board [~~board~~] staff.

§665.8. Examination Process and Board's Interaction.

The Board [~~board~~] will select examinations using blueprints developed and approved by the Board [~~board~~].

(1) Committees will be appointed to:

(A) Write [~~write~~] examination questions based on content areas defined in the blueprint;[~~,~~]

(B) Review [~~review~~] examinations before administration for accuracy and resolution time;[~~,~~]

(C) Determine [~~determine~~] cut off scores; and

(D) For [~~for~~] any other purposes determined necessary by the Board [~~board~~].

(2) Members of the Board may serve as liaison members to each committee. Each committee chair will either appoint or serve as a liaison [~~liason~~] to other committees as necessary to facilitate communication between committees.

§665.9. Continuing Education Credit.

Examination committee members are eligible to receive continuing education credit for time served in the commission of their duties and documented on forms signed by the chair of the committee and Executive Director [~~executive director~~] of the Board [~~board~~].

§665.10. Texas Guaranteed Student Loan Corporation Defaulters.

(a) In accordance with the Texas Education Code, §57.491, holders of licenses as defined in that section who have been identified by the Texas Guaranteed Student Loan Corporation (TGSLC) as student loan defaulters are precluded from having their license renewed unless:

(1) The renewal is the first renewal following the Board's receipt of the list including the licensee's name among those in default; or

(2) The licensee presents to the Board a certificate issued by the TGSLC certifying that:

(A) The licensee has entered a repayment agreement on the defaulted loan; or

(B) The licensee is not in default on a loan guaranteed by the TGSLC.

(b) Whenever the Board has been notified by the TGSLC that a licensee is in default on a student loan the Board shall notify the licensee by certified mail of its intention not to renew his/her license upon the license's expiration. The licensee may, in writing within 30 days of receipt of the proposed action, request a hearing. In the absence of such a written request for a hearing the proposed intention not to renew will become final upon informal disposition, pursuant to Title 2, Texas Occupations Code, Chapter 53.

(c) Once the Board has received a certificate issued by the TGSLC that:

(1) The licensee has entered a repayment agreement on the defaulted loan; or

(2) The licensee is not in default on a loan guaranteed by the TGSLC, the licensee may apply for his/her license renewal subject to all other requirements for renewal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300262
Marcelino A. Estrada
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 239-5267

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 27. CASE MANAGEMENT FOR CHILDREN AND PREGNANT WOMEN

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§27.1, 27.3, 27.5, 27.7, 27.9, 27.11, 27.13, and 27.15 and new §§27.1, 27.3, 27.5, 27.7, 27.9, 27.11, 27.13, 27.15, 27.17, 27.19, 27.21, 27.23, 27.25, and 27.27, concerning Case Management for Children and Pregnant Women.

BACKGROUND AND PURPOSE

Case Management for Children and Pregnant Women is a Medicaid benefit that assists eligible clients in gaining access to necessary medical, social, educational, and other services related to their health condition or health risk. Case Management for Children and Pregnant Women is administered by the department by authorization of the Health and Human Services Commission. The repeals and rewrite of the rules are necessary to restructure the rules, add clarity, remove redundancies, and improve flow and accuracy. Other revisions are to (1) clarify the criteria for client eligibility by providing language which matches the federal definition of case management; (2) define and separate the provider and case manager requirements and responsibilities; and (3) increase the provider base by removing the requirement of two years of experience for registered nurses with a bachelor or advanced degree in nursing; and for social workers.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Government Code, §2001.039, requires that each state agency review a rule no later than the fourth anniversary of the date on which the rule takes effect and every four years after that date. Sections 27.1, 27.3, 27.5, 27.7, 27.9, 27.11, 27.13, and 27.15 have been reviewed and are being repealed and new rules proposed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

Subchapter A. General Provisions.

New §27.1 and §27.3 define the purpose and application of the rules and define terms used in this chapter.

Subchapter B. Client Services.

New §27.5 sets forth criteria for client eligibility to receive Case Management for Children and Pregnant Women services. New §27.7 outlines client rights, including freedom of choice of case management providers and the right to a fair hearing. New §27.9 explains how client confidentiality will be protected. New §27.11 describes the essential components of Case Management for Children and Pregnant Women services. The requirement for prior authorization is set forth in §27.13 and requires prior authorization for comprehensive and follow-up contacts.

Subchapter C. Provider Qualifications and Responsibilities.

New §27.15 sets forth minimum qualifications to be approved as a provider. Section 27.17 describes the provider approval process. New §27.19 describes the responsibilities of providers. New §27.21 outlines case manager qualifications. Proposed changes to the case manager requirement are that the experience requirement is removed for registered nurses and social workers with a bachelor or advanced degree. Proposed changes indicate that registered nurses with an associate's degree are required to possess two years of cumulative paid full-time work experience or two years of supervised, full-time educational intern-

ship/practicum experience in the past ten years with children, up to age 21, and/or pregnant women. Experience must include assessing the psychosocial and health needs of and making community referrals for these populations. The proposed new language also mandates social workers have licensure appropriate for their practice, including the practice of independent social work as governed by 22 TAC Chapter 781.

New §27.23 specifies case manager responsibilities including reporting of suspected abuse and neglect. Utilization and quality assurance review activities and processes are set forth in new §27.25 and include provider responsibilities in the event of an overpayment. New §27.27 defines actions the department may take in the event of provider non-compliance with rules, policies, or procedures, including the withdrawal of approval for a provider.

FISCAL NOTE

Ms. Jann Melton-Kissel, Director of the Specialized Health Services Section of the Department of State Health Services, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the rules as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Melton-Kissel has also determined that for each year of the first five years the sections are in effect, there will be no adverse economic impact on micro-businesses or small businesses required to comply with the sections as proposed because it was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

PUBLIC BENEFIT

Ms. Melton-Kissel has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. Public benefit is anticipated as a result of clearer language, better understanding of client eligibility and provider requirements and responsibilities.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeals and new rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted in writing to Elaine Mittel, Case Management Branch, Health Screening and Case Management Unit, Department of State Health Services, Mail Code 1938, P.O. Box 149347, Austin, Texas 78714-9347, by fax to (512) 776-7574, or by email to elaine.mittel@dshs.state.tx.us. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

25 TAC §§27.1, 27.3, 27.5, 27.7, 27.9, 27.11, 27.13, 27.15

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are authorized by the Government Code, §531.0055, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation of and provision of health and human services by the health and human services agencies; Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001; Health and Safety Code, Chapter 32, provides the authority to establish maternal and infant health improvement services programs in the department to serve eligible recipients; Human Resources Code, §22.0031, which mandates case management for high risk pregnant women and high risk infants; Human Resources Code, Chapter 32, which enables the state to provide medical assistance; and Government Code, §531.021, which provides the Health and Human Services Commission with the authority to propose rules to administer the state's medical assistance program.

The repeals affect the Government Code, Chapter 531; Health and Safety Code, Chapters 32 and 1001; and Human Resources Code, Chapters 22 and 32.

§27.1. Definition of Terms.

§27.3. Eligible Recipients.

§27.5. Case Management for Children and Pregnant Women Service Provisions.

§27.7. Service Limitations.

§27.9. Applicant Qualifications.

§27.11. Case Management Provider Requirements.

§27.13. Application Process.

§27.15. Case Management Provider Review and Monitoring Process.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 28, 2013.

TRD-201300311
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 776-6972

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SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §27.1, §27.3

STATUTORY AUTHORITY

The new sections are authorized by the Government Code, §531.0055, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation of and provision of health and human services by the health and human services agencies; Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001; Health and Safety Code, Chapter 32, provides the authority to establish maternal and infant health improvement services programs in the department to serve eligible recipients; Human Resources Code, §22.0031, which mandates case management for high risk pregnant women and high risk infants; Human Resources Code, Chapter 32, which enables the state to provide medical assistance; and Government Code, §531.021, which provides the Health and Human Services Commission with the authority to propose rules to administer the state's medical assistance program.

The new sections affect the Government Code, Chapter 531; Health and Safety Code, Chapters 32 and 1001; and Human Resources Code, Chapters 22 and 32.

§27.1. Purpose and Application.

(a) Case Management for Children and Pregnant Women is a Medicaid benefit that assists eligible clients in gaining access to the necessary medical, social, educational, and other service needs related to their health condition/health risk or, for a pregnant women, a high-risk condition. The Department of State Health Services (department), by authorization of the Health and Human Services Commission (HHSC), operates and administers the components of this program.

(b) The rules in this chapter apply to Case Management for Children and Pregnant Women services, client eligibility for these services, provider qualifications to provide these services, and oversight of the administration of Case Management for Children and Pregnant Women services.

§27.3. Definitions.

The following words or terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise.

(1) Access--The ability of an eligible client to obtain health and health-related services, as determined by factors such as: the availability of Texas Health Steps services; service acceptability to the eligible child, pregnant woman, or both; the location of health care facilities and other resources; transportation; hours of facility operation; and length of time available to see the health care provider.

(2) Active Providers--Providers who have reported that they are currently accepting referrals. Inactive providers are those who have reported that they are not accepting referrals or have been placed on inactive status by the department due the department's inability to make contact with them.

(3) Applicant--An agency, organization, or individual who submits an application to the department for approval as a provider of Case Management for Children and Pregnant Women services.

(4) Application process--Submission of an application to provide Case Management for Children and Pregnant Women services, and the department's ensuing review and disposition of the application.

(5) Case manager--An individual qualified under §27.21 of this title (relating to Case Manager Qualifications) who provides Case Management for Children and Pregnant Women services, either as an independent provider, or as an employee or contractor of a case management provider.

(6) Case Management for Children and Pregnant Women services--In reference to the federal regulation (42 C.F.R. §440.169) definition of case management, those services that assist eligible clients in gaining access to necessary medical, social, educational, and other services related to their health condition/health risk or high-risk condition.

(7) Children with a health condition/health risk--Children birth through age 20 who have or are at risk for a medical condition, illness, injury, or disability that results in limitation of function, activities, or social roles in comparison with healthy peers of the same age in the general areas of physical, cognitive, emotional, or social growth and development.

(8) Client--An individual who is eligible for Medicaid and receives services described under this chapter, or the client's parent or legal guardian acting on the client's behalf.

(9) Client choice--Clients are given the freedom to choose a provider, to the extent possible, from among three providers.

(10) Family--A basic unit in society having at its nucleus: one or more adults living together and cooperating in the care and rearing of their biological or adopted children; or a person or persons acting as an individual's family, foster family, or identifiable support person(s).

(11) Health and health-related services--Services which are provided to meet the comprehensive (preventive, primary, tertiary, and specialty) health needs of the eligible client, including, but not limited to, medical and dental checkups, immunizations, acute care visits, pediatric specialty consultations, physical therapy, occupational therapy, audiology, speech language services, mental health professional services, pharmaceuticals, medical supplies, prenatal care, family planning, adolescent preventive health, durable medical equipment, nutritional supplements, prosthetics, eyeglasses, and hearing aids.

(12) High-risk condition--Applies to women who are pregnant and have a medical and/or psychosocial condition(s) that places them and their fetuses at a greater than average risk for complications, either during pregnancy, delivery, or following birth.

(13) Medicaid--Medical assistance program implemented by the State of Texas under the provisions of Title XIX of the Social Security Act, as amended, at 42 U.S.C., §1396, *et seq.*

(14) Prior authorization--The department's approval of a provider's request for permission to perform a comprehensive visit and

follow-up contacts with a client, based on the department's receipt and review of documentation supporting the client's eligibility for services under this chapter. Prior authorization is a condition of reimbursement, not a guarantee of payment.

(15) Provider--An agency or individual approved by the department to provide Case Management for Children and Pregnant Women services and enrolled as a Medicaid provider.

(16) Quality Assurance Review--A review of a provider's client records, internal quality assurance policy, case manager's licensure, outreach materials, and their compliance with the department's rules and policies.

(17) State--The State of Texas.

(18) TMPPM--Texas Medicaid Provider Procedures Manual.

(19) Utilization Review--A review of claims data in which trends have been identified that could indicate potential concerns with the quality of case management services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 28, 2013.

TRD-201300312
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 776-6972

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SUBCHAPTER B. CLIENT SERVICES

25 TAC §§27.5, 27.7, 27.9, 27.11, 27.13

STATUTORY AUTHORITY

The new sections are authorized by the Government Code, §531.0055, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation of and provision of health and human services by the health and human services agencies; Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001; Health and Safety Code, Chapter 32, provides the authority to establish maternal and infant health improvement services programs in the department to serve eligible recipients; Human Resources Code, §22.0031, which mandates case management for high risk pregnant women and high risk infants; Human Resources Code, Chapter 32, which enables the state to provide medical assistance; and Government Code, §531.021, which provides the Health and Human Services Commission with the authority to propose rules to administer the state's medical assistance program.

The new sections affect the Government Code, Chapter 531; Health and Safety Code, Chapters 32 and 1001; and Human Resources Code, Chapters 22 and 32.

§27.5. Client Eligibility.

A client eligible for services under this chapter must be either a child with a health condition/health risk or a pregnant woman with a high-risk condition who:

(1) is Medicaid-eligible in Texas;

(2) is in need of Case Management for Children and Pregnant Women services; and

(3) desires such services.

§27.7. Client Rights.

(a) Use of services is voluntary. Acceptance or refusal of services does not affect eligibility for or receipt of any other Medicaid services, or for future case management services.

(b) All records about clients are considered confidential information, in accordance with the standards and requirements described in §27.9 of this title (relating to Client Confidentiality).

(c) Clients have the right to:

(1) actively participate in case management decisions, including the right to refuse services from the provider;

(2) receive prior authorized services when services are requested and informed consent is given;

(3) receive services free from abuse or harm from the case manager and the case management provider;

(4) have freedom of choice to choose any active provider in their residing county;

(5) have freedom of choice to request a transfer to another case manager in the client's service area at any time; and

(6) request a fair hearing, conducted in accordance with the rules in 1 TAC, Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules), within 90 days after receiving written notification that services have been denied, reduced, suspended, or terminated.

§27.9. Client Confidentiality.

(a) Federal and state laws and regulations prohibit the disclosure of information about Medicaid clients without effective consent by the client or on behalf of the client, except for purposes directly connected with the administration of the Medicaid program, as described in 42 U.S.C., §1396a(a)(7); 42 C.F.R. §§431.301 - 431.306; Human Resources Code, §12.003 and §21.012; and Government Code, §552.101. Case management providers are not considered directly connected with the administration of the program. Although case management providers are not entitled to confidential information without prior consent, they are able to verify a client's eligibility status.

(b) Entities with which HHSC or the department contracts to perform certain administrative functions, including contractors for outreach, informing, and transportation services, may receive confidential information without the client's consent, but only to the extent necessary to perform and administer the contract. These contracted entities are bound by the same standards of confidentiality applicable to the Medicaid program, and they must provide effective safeguards to ensure confidentiality.

§27.11. Components of Case Management for Children and Pregnant Women Services.

The following are the essential components of Case Management for Children and Pregnant Women services and explanation of billable components.

(1) Intake--A case manager's contact with the client/family/guardian that includes the collection of demographic, health, and

other information relevant to the determination of the client's potential eligibility.

(2) Comprehensive visit--A case manager's face-to-face meeting with the client/family/guardian that includes the development of a:

(A) Family Needs Assessment. A comprehensive face-to-face assessment of client needs to determine the need for any medical, educational, social, or other services required to address short- and long-term health and well-being of the client. These assessment activities must be documented on a Family Needs Assessment form and must include:

(i) taking a client's history;

(ii) identifying the client's needs, assessing and addressing family issues that impact the client's health condition/risk or high-risk condition and completing related documentation; and

(iii) gathering information from other sources, such as family members, medical providers, social workers, and educators (if necessary), to form a complete assessment of the client.

(B) Service Plan. A document developed with the client that determines a planned course of action based upon the information collected through the assessment. The Service Plan must be documented on a Service Plan form and must:

(i) include activities and goals that are developed in consultation with the client, involve the participation of the client, and address the medical, social, educational, and other services needed by the client;

(ii) identify a course of action to respond to the assessed needs of the client, including identifying the individual responsible for contacting the appropriate health and human service providers, and designating the time frame within which the client should access services; and

(iii) include a Service Plan Addendum if there are revisions or if additional needs have been identified following the initial Service Plan development. The Service Plan Addendum shall be completed and documented during a follow-up visit.

(3) Referral and related activities to help the client obtain needed services, including activities that help link the client with:

(A) medical, social, and educational providers; and

(B) other programs and services that can provide needed services, such as making referrals to providers for needed services and scheduling appointments for the client.

(4) Follow-up contacts by a case manager necessary to ensure the service plan is implemented and adequately addresses the client's needs.

(A) Follow-up contacts shall be conducted as frequently as necessary to determine whether the following conditions are met:

(i) services are being furnished in accordance with the client's service plan;

(ii) services in the service plan are adequate; and

(iii) the service plan and service arrangement are modified when the client's needs or status change.

(B) Follow-up contacts by case manager for clients who are pregnant women with a high-risk condition shall occur as needed through the 59th day postpartum.

(5) Case management may include collateral contacts with non-eligible individuals that are directly related to identifying the needs and supports for helping the client access services and managing the client's care.

(6) The case management components that are eligible for Medicaid reimbursement are the comprehensive visit and each follow-up contact performed in accordance with this section.

(7) Case management services are not reimbursable if they:

(A) are provided to clients who do not meet the definition for client eligibility in §27.5 of this title (relating to Client Eligibility);

(B) are not prior-authorized in accordance with §27.13 of this title (relating to Prior Authorization); or

(C) are provided to a client who has already received another case management service on the same day from the same billing provider.

§27.13. Prior Authorization.

(a) The department may establish policies and procedures that providers must follow in order to obtain prior authorization for services.

(b) Following intake completion, the initial prior authorization request must be supported by required documentation and submitted to the department for review and disposition. If the documentation supports eligibility, a comprehensive visit and follow-up visit(s) will be prior-authorized. The number of follow-up visit(s) that is prior-authorized will be based on the client's level of need, level of medical involvement, and complicating psychosocial factors documented on the request.

(c) Any additional requests for comprehensive or follow-up visit(s) must be prior-authorized. Required documentation must be submitted to the department for review and disposition before any additional services may be prior-authorized.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-6972

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SUBCHAPTER C. PROVIDER QUALIFICATIONS AND RESPONSIBILITIES

25 TAC §§27.15, 27.17, 27.19, 27.21, 27.23, 27.25, 27.27

STATUTORY AUTHORITY

The new sections are authorized by the Government Code, §531.0055, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation of and provision of health and human services by the health and human services agencies; Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services

Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001; Health and Safety Code, Chapter 32, provides the authority to establish maternal and infant health improvement services programs in the department to serve eligible recipients; Human Resources Code, §22.0031, which mandates case management for high risk pregnant women and high risk infants; Human Resources Code, Chapter 32, which enables the state to provide medical assistance; and Government Code, §531.021, which provides the Health and Human Services Commission with the authority to propose rules to administer the state's medical assistance program.

The new sections affect the Government Code, Chapter 531; Health and Safety Code, Chapters 32 and 1001; and Human Resources Code, Chapters 22 and 32.

§27.15. Provider Qualifications.

A provider shall not be approved as a provider of Case Management for Children and Pregnant Women unless they meet the following qualifications:

(1) completion of application process and approval by the department;

(2) agreeing to comply with the rules, policies, and procedures of the department relating to Case Management for Children and Pregnant Women;

(3) agreeing to comply with applicable state and federal laws governing participation of providers in the Medicaid program and to enroll as a state Medicaid provider;

(4) be a provider who meets, or employs or contracts with, one or more case managers who each meet, the qualifications specified in §27.21 of this title (relating to Case Manager Qualifications); and

(5) has never been terminated by the department and is not listed on the HHSC Office of Inspector General's Excluded Individual Listing.

§27.17. Provider Approval Process.

(a) To become an approved provider, an applicant must submit a completed application to the department.

(b) The department will review the application and provide a response within timeframes specified in policies and procedures. An application will not be reviewed and considered until all information is provided in a clear and understandable manner.

(c) Providers approved by the department must also enroll with the Medicaid Claims Administrator as a Medicaid provider.

(d) Providers who fail to submit an application to enroll as a state Medicaid provider within twelve months of approval by the department must submit a new application to the department.

§27.19. Provider Responsibilities.

Providers must:

(1) operate in accordance with the laws, rules, regulations, and standards of care relating to the practice of their respective license(s); ensure that their case managers are operating within the laws, rules, regulations, and standards of care relating to the practice of their respective license(s); and ensure that their case managers operate only within the scope of their respective license(s);

(2) provide services according to policies and procedures as published in the TMPPM and Medicaid bulletins, and in accordance with the policies and procedures of the department;

(3) cease providing services and notify the department if the professional license of a provider is suspended or revoked, with such notification to be provided to the department no later than seven calendar days after the date that the suspension or revocation is imposed;

(4) assure that case managers attend required trainings provided by the department;

(5) develop and maintain a quality management system for the provision of services with the primary goal of assisting clients in accessing necessary medical, social, educational, and other services related to their health condition/health risk or high-risk condition;

(6) ensure that outreach activities do not impede freedom of client choice, and that they comply with 1 TAC §371.27 (relating to Prohibition against Solicitation of Medicaid or CHIP Recipients); and

(7) ensure that clients are given choice of providers for case management.

§27.21. Case Manager Qualifications.

An individual shall not be approved to provide Case Management for Children and Pregnant Women unless they meet the following qualifications:

(1) licensed in the State of Texas as a registered nurse (with a bachelor or advanced degree in nursing), whose license is not temporary or provisional in nature; or

(2) licensed in the State of Texas as a registered nurse (with an associate degree in nursing), whose license is not temporary or provisional in nature. The individual must also possess two years of cumulative paid full-time work experience or two years of supervised, full-time educational internship/practicum experience in the past ten years with children, up to age 21, and/or pregnant women. Experience must include assessing the psychosocial and health needs of and making community referrals for these populations; or

(3) licensed in the State of Texas as a social worker with licensure appropriate for his/her practice, including the practice of Independent Social Work, and whose license is not temporary or provisional in nature; and

(4) has completed the department's standardized case management training.

§27.23. Case Manager Responsibilities.

Case managers must:

(1) comply with all licensure requirements of the appropriate state licensure/examining board, including the obligation to report all suspected child abuse/neglect;

(2) cease providing services and notify the department if the case manager's professional license is suspended or revoked, with such notification to be provided to the department no later than seven calendar days after the date that the suspension or revocation is imposed;

(3) provide services convenient to clients, either in their home, an office setting, or other place of client's preference; and

(4) have knowledge of, and coordinate services with, providers of health and health-related services and other active community resources.

§27.25. Utilization and Quality Assurance Reviews and Compliance.

(a) The purpose of a utilization or quality assurance review is to ensure program fiscal integrity, to address the federal mandate requiring program funds be spent only as allowed under federal and

state laws and regulations, and to ensure that services are appropriately provided to clients.

(b) During each fiscal year, the department will conduct quality assurance and utilization reviews of all active and inactive providers to monitor claims, quality of case management services and compliance with Case Management for Children and Pregnant Women rule and policy.

(c) Providers must cooperate with the quality assurance and utilization reviews. Providers will be given notification of upcoming reviews in accordance with the department's policies and procedures.

(d) If the results of the utilization or quality assurance review indicate overpayment, the department will notify HHSC of the overpayment and the provider will be given information about how to arrange for repayment.

(e) Providers must voluntarily notify the Medicaid claims administrator to arrange for repayment if they become aware that they received an overpayment.

§27.27. Termination, Suspension, Probation, and Reprimand of Providers.

A provider's violation or non-compliance with federal and or state Medicaid laws, rules and regulations, rules under this chapter, or Case Management and Pregnant Women policies and procedures may result in one or more of the following actions taken by the department.

(1) Notification to the Medicaid claims administrator through HHSC that the department has terminated the case management provider. Providers will receive written notice of termination. Providers who are terminated will not be approved if they reapply.

(2) Suspension of a provider in accordance with the department's policies and procedures. Providers will receive written notice of suspension.

(3) Probation of a provider in accordance with the department's policies and procedures. Providers will receive written notice of probation.

(4) Reprimand of a provider in accordance with the department's policies and procedures. Providers will receive written notice of reprimand.

(5) Report and referral to the appropriate professional licensure entity.

(6) Report and referral to HHSC Office of Inspector General.

(7) Report to a law enforcement agency.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa Hernandez
General Counsel
Department of State Health Services
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CHAPTER 49. ORAL HEALTH PROGRAM

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§49.1 - 49.18, concerning the Oral Health Program.

BACKGROUND AND PURPOSE

The rules are used to administer the Oral Health Program and implement the Texas Oral Health Improvement Act, Health and Safety Code, Chapter 43. The purpose of the Oral Health Program is to provide comprehensive oral health services to eligible individuals. Based on available funding and priority, oral health services may include dental surveillance; data collection and reporting; provision of preventive oral health services; provision of emergency oral health services; provision of comprehensive oral health services; and oral health promotion and education. Through currently available funding derived from federal grant dollars, central office staff and five regional dental teams, each of which consists of a dentist and dental hygienist, conduct dental surveillance and data collection and reporting and provide preventive oral health services. These services are offered to eligible individuals, who are primarily pre-school and school-age children on the free and reduced-lunch program in rural areas of the state who have limited or no access to preventive dental services. Although the treatment, health promotion, and education portions of the Oral Health Program are not currently funded, retaining the rules allows the oral health treatment services to be implemented quickly if adequate funding is made available.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 49.1 - 49.18, have been reviewed, and the department has determined that reasons for adopting the sections continue to exist, because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

Proposed amendments throughout the rules update the title of the chapter to reflect the current program name; clarify that the fee-for-service oral health treatment is a benefit of the Oral Health Program, rather than a stand-alone program; and improve grammar, understandability, and readability.

Subchapter A. General Provisions in FFS Oral Health Treatment Benefits.

The amendments to §49.1 describe the services the Oral Health Program is statutorily authorized to provide, including data collection and analysis. Subsection (b) of the section is deleted because the benefits are better described in each section title under Subchapters B and C, and the title of Subchapter D of this chapter, related to FFS Oral Health Treatment Services.

Amendments to §49.2: (1) remove the definition for "Act" as it is previously defined under §49.1; (2) revise the definition of "Administrative Sanctions" to include contract termination to the list of possible actions; (3) remove the definition of "Commissioner," as decision-making authority regarding benefits eligibility is delegated to the state dental director, therefore, making the definition no longer necessary; (4) remove the definition of "Department" as it is previously defined under Purpose and Application; (5) add a definition for the fee-for-service (FFS) oral health treatment benefits; (6) revise the definition of the "Oral Health Program" to better describe its structure and remove duplication of terms; (7) change the definition of "Oral health services" to "Oral health treatment benefits" to clarify that the citation is relevant

to treatment benefits, rather than overall Oral Health Program services, which are described under "Purpose and Application"; (8) delete the definition of "Program" to remove any suggestion that the treatment benefits are a separate program within the Oral Health Program; and revise the definitions of "Recipient," "State Dental Director," and "Third-party nominator." Definitions are renumbered throughout, as appropriate.

Amendments to §49.3 modify the rule title to clarify that the section pertains to the Oral Health Program, as described in §49.1 and make minor revisions to subsection (b) to increase readability. The proposed changes also move subsections (c) and (d) to Subchapter C, Provider Participation in FFS Oral Health Treatment Benefits, §49.10 (renamed) Provider Participation Requirements to Provide FFS Oral Health Treatment Services, with revisions to update the mailing address for the Oral Health Program and specify the method that additional copies of the benefits manual can be obtained, as the information is specific to the FFS oral health treatment benefit, rather than the overall function of the Oral Health Program.

Amendments to §49.4(2) modify the rule title to clarify that the section pertains to the Oral Health Program, remove redundancies, and provide clarity regarding the FFS oral health treatment benefits and the benefits manual.

Subchapter B. Recipient Participation in FFS Oral Health Treatment Benefits.

Proposed amendments update the subchapter title to reflect that the subchapter refers to FFS oral health treatment benefits.

The amendments to §49.5 and §49.6 update the rules' titles to clarify that the reference is to the FFS oral health treatment benefits, remove redundancies, and provide clarity regarding the oral health treatment benefits and the benefits manual. The amendment to §49.6(b)(3) removes the acronym for USDA, as it is not referenced in the remaining rule text.

Amendments to §§49.7 - 49.9 update the rules' titles to clarify that the reference is to the FFS oral health treatment benefits, remove redundancies and provide clarity regarding the oral health treatment benefits and the benefits manual, and clarify that the benefits are a component of the Oral Health Program. An amendment to §49.9(d) delegates the decision to waive eligibility requirements under certain circumstances to the state dental director.

Subchapter C. Provider Participation in FFS Oral Health Treatment Benefits.

Proposed amendments update the subchapter title to reflect that the subchapter refers to FFS oral health treatment benefits.

The amendments to §49.10 update the rule title to clarify that the reference is to the FFS oral health treatment services and incorporate text moved from §49.3. The amendments to the section additionally remove redundancies and provide clarity regarding the oral health treatment benefits and the benefits manual and increase readability.

The amendments to §49.11 update the rule title to clarify that the reference is to the FFS oral health treatment services and remove redundancies, provide clarity regarding the oral health treatment benefits and the benefits manual, and clarify that providers must enter into a contract with the department in order to provide FFS oral health treatment benefits.

The amendments to §49.12 update the rule title to clarify that the reference is to the FFS oral health treatment services, remove redundancies, provide clarity regarding the oral health treatment benefits and the benefits manual, and add an acronym for the Texas State Board of Dental Examiners, as it is previously defined in the proposed rule text. An amendment to subsection (d) adds that FFS oral health treatment contracts may be canceled if voided by law.

The amendments to §49.13 update the rule title and text to clarify that the reference is to the FFS oral health treatment services, remove redundancies, and provide clarity regarding the oral health treatment benefits and the benefits manual.

The amendments to §49.14 update the rule title to clarify that the reference is to the FFS oral health treatment services, remove redundancies and provide clarity regarding the oral health treatment benefits and the benefits manual, and clarify that the benefits are a component of the Oral Health Program. An amendment to subsection (c) of the section specifies that a provider claim may be resubmitted with appropriate corrections to be considered for payment.

The amendments to §49.15 remove redundancies, provide clarity regarding the oral health treatment benefits and the benefits manual, and clarify that the benefits are a component of the Oral Health Program.

Subchapter D. Appeals Process for FFS Oral Health Treatment Benefits and Services.

Proposed amendments update the subchapter title to reflect that the subchapter refers to FFS oral health treatment benefits and services.

The amendment to §49.16 clarifies that the benefits are a component of the Oral Health Program.

The amendments to §49.17 provide additional clarity and procedure to request a due process hearing.

The amendments to §49.18 remove specificity and allow the Oral Health Program to operate under the department's fair hearing procedures.

FISCAL NOTE

Ms. Jann Melton-Kissel, Director, Specialized Health Services Section, has determined that for each year of the first five years the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Melton-Kissel has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the sections as proposed. Interpretation of the rules determined that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Ms. Jann Melton-Kissel has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The anticipated public benefit

is a clearly worded and succinct set of rules that will facilitate understanding by providers and recipients about benefits, services, rights, and responsibilities associated with the Oral Health Program.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce the risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted in writing to Dr. Linda M. Altenhoff, DDS, State Dental Director, Department of State Health Services, P.O. Box 149347, Mail Code 1938, Austin, Texas 78714-9347 or by email to OHPRulesReview@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §§49.1 - 49.4

STATUTORY AUTHORITY

The amendments are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001; and Health and Safety Code, Chapter 43, which authorizes the department to provide comprehensive oral health services to eligible individuals. The review of the rules implements Government Code, §2001.039.

The amendments affect Health and Safety Code, Chapters 43 and 1001; and Government Code, Chapter 531.

§49.1. Purpose and Application.

[~~(a)~~] The rules in this chapter implement the Texas Oral Health Improvement Act, Health and Safety Code, Chapter 43 (Act). The Act authorizes the Department of State Health Services (department) to provide treatment benefits for [~~furnish oral health services to~~] eligible individuals; oral disease prevention services; and[~~. Oral health services may include~~] oral health promotion and education[~~, preventive oral health services, and oral health treatment services to eligible low-income individuals~~]. The Act also provides for administration of the program which includes dental surveillance activities.

[~~(b) Subchapters B - D of this chapter apply only to the delivery of oral health treatment services under the department's Fee-for-Service Dental Care Program.~~]

§49.2. Definitions.

The following words and terms, where used in this chapter, [~~these sections, shall~~] have the following meanings, unless the context clearly indicates otherwise.

[~~(1) Act--The Texas Oral Health Improvement Act, Health and Safety Code, Chapter 43.~~]

(1) [~~(2)~~] Action--Denial, modification, suspension, or termination of fee-for-service (FFS) oral health treatment benefits [~~services~~] or participation rights of an applicant or a recipient [~~of the program~~].

(2) [~~(3)~~] Administrative review--A secondary level of review available to applicants, recipients, and providers who want to resolve a conflict, or appeal an administrative sanction or a denied claim.

(3) [~~(4)~~] Administrative sanctions--Penalties imposed on a provider who fails to comply with [~~program~~] rules, policies, procedures, or standards, which may include recoupment or adjustment of payments, [~~or~~] payment hold, or termination of the provider's contract.

(4) [~~(5)~~] Applicant--A person applying to receive FFS oral health treatment benefits [~~services under the program~~], but for whom eligibility has not been established.

(5) [~~(6)~~] Business day--Normal department operating hours from 8:00 a.m. - 5:00 p.m., Monday through Friday, with the exception of state and federal holidays.

[~~(7) Commissioner--The Commissioner of the Department of State Health Services.~~]

(6) [~~(8)~~] Conflict--The proposed modification, suspension, or termination of a contract with a provider.

(7) [~~(9)~~] Dentist--An individual licensed by the Texas State Board of Dental Examiners (TSBDE) to practice dentistry in the State of Texas.

(8) [~~(10)~~] Dentally accepted standards--Operating in accordance with the laws relating to the practice of dentistry, [~~and~~] the rules of the TSBDE, [~~Texas State Board of Dental Examiners~~] and standards of practice.

[~~(11) Department--Department of State Health Services.~~]

(9) [~~(12)~~] Eligible individual--An individual who meets the criteria necessary to receive oral health treatment benefits [~~services~~] under the Act and the rules in this chapter.

(10) [~~(13)~~] Emergency care--Oral health treatment services for relief of pain and infection, including extractions and basic restorative services to prevent premature loss of teeth.

(11) FFS--The department's fee-for-service oral health treatment benefits, administered by the department's Oral Health Program.

(12) [~~(14)~~] FFS oral health treatment benefits manual (manual) [~~Manual~~]--A compilation of policies, procedures, and instructions prepared by the department's Oral Health Program for FFS oral health treatment benefits, [~~the Fee-for-Service Dental Care Program~~] to be used by providers of oral health treatment services. Participating providers will receive a copy of the manual [~~Manual~~]

and any updates, changes, and amendments, and must comply with its requirements [during participation in the program].

(13) [(15)] Non-provider--A dentist or physician licensed to practice under Texas state law but not currently under contract with the department to provide oral health treatment benefits [participate in the program].

(14) [(16)] Oral Health Program [(OHP)]--A program [The Oral Health Program of the department] comprised of central office staff and regional dental teams.

(15) [(17)] Oral health treatment benefits [services]--Preventive or treatment services affecting the structures of the mouth, including the hard and soft tissues such as teeth, jaws, gums, vestibule, tongue, cheeks [ehecks], lips, floor and roof of the mouth, and adjacent masticatory structure[, and oral health education and promotion activities].

(16) [(18)] Other benefit--A benefit to which an individual is entitled, other than a benefit provided under the Act, for the payment of costs of oral health treatment benefits [services], including benefits available from:

(A) an insurance policy, group oral health plan, or prepaid oral care plan;

(B) Title XVIII or Title XIX of the Social Security Act, as amended (42 U.S.C. §1395 *et seq.* and 42 U.S.C. §1396 *et seq.);*

(C) the Veteran's Administration;

(D) the Civilian Health and Medical Program of the Uniformed Services;

(E) worker's compensation or any other compulsory employer's insurance program;

(F) a public program created by federal law, state law, or the ordinances or rules of a municipality or political subdivision of the state; or

(G) a cause of action for dental or oral health treatment benefits [services] expenses or a settlement or judgment based upon the cause of action, if the expenses are related to the need for treatment benefits [services] provided under the Act.

(17) [(19)] Physician--An individual licensed by the Texas Medical Board to practice medicine in the State of Texas.

[(20) Program--The department's Fee-for-Service Dental Care Program administered by the department's OHP, which provides oral health treatment services to eligible individuals.]

(18) [(21)] Provider--A person with whom the department contracts to provide oral health treatment services under the Act.

(19) [(22)] Recipient--A person approved as eligible to receive oral health treatment benefits [services].

(20) [(23)] State dental director--A Texas licensed dentist who serves as the manager of the Oral Health Program [OHP], or that person's designee.

(21) [(24)] State fiscal year--The period from September 1 through August 31 of the following year.

(22) [(25)] Support--The contribution of money or services necessary for a person's maintenance, including food, clothing, shelter, transportation, and health care.

(23) [(26)] Third-party nominator--A person aware of an applicant's economic condition who refers the applicant to the Oral Health Program [program] for oral health treatment benefits [services]. Third-party nominators include school administrators, school nurses, social workers, city or county officials, public health clinics, community health centers, dentists, physicians, [or] hospitals, or any other source acceptable to the Executive Commissioner of the Health and Human Services Commission.

§49.3. Oral Health Program Priorities.

(a) (No change.)

(b) The department determines at the beginning of each biennium the categories of persons that will have priority for oral health services under the program, based upon available funding [the funding that is available]. The department may change program priorities at any time.

[(c) Providers must comply with all policies, procedures, and requirements for participation included in the program Manual.]

[(1) The department adopts by reference the program Manual, including all related policies, procedures, and any updates, changes, and amendments.]

[(2) A copy of the Manual is given to each provider participating in the program and is available for public inspection during regular business hours at the department's headquarters at Department of State Health Services, Texas Health Steps Branch, Mail Code 1938, 1100 West 49th Street, Austin, Texas 78756.]

[(d) Based upon the availability of funds, program services may be made available in every health service region of the state. The department determines the amount of funds to allocate to a health service region, and may modify the allocation at any time. Program administration is carried out through the department's central office and health service regions.]

§49.4. Methods of Delivering Oral Health Services.

Delivery of oral health services may be accomplished by any of the following methods.

(1) (No change.)

(2) The department may contract with providers to [participate in the program and] provide FFS oral health treatment [services] for eligible individuals. Requirements for provider participation and reimbursement are set forth in the manual [program guidelines, instructions, and fee schedules in the Manual and related program policies and procedures].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa Hernandez
General Counsel
Department of State Health Services
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SUBCHAPTER B. RECIPIENT PARTICIPATION IN FFS ORAL HEALTH TREATMENT BENEFITS

25 TAC §§49.5 - 49.9

STATUTORY AUTHORITY

The amendments are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001; and Health and Safety Code, Chapter 43, which authorizes the department to provide comprehensive oral health services to eligible individuals. The review of the rules implements Government Code, §2001.039.

The amendments affect Health and Safety Code, Chapters 43 and 1001; and Government Code, Chapter 531.

§49.5. Application Process for FFS Oral Health Treatment Benefits.

(a) An applicant for oral health treatment benefits [~~services~~] must be referred to the Oral Health Program [~~program~~] by a third-party nominator who knows the individual's economic condition.

(b) Each applicant for oral health treatment benefits [~~services~~] must complete or cause to be completed an application form, which shall include the following information for the individual needing treatment [~~services~~]:

(1) personal information, including name, address, birthdate, gender, and ethnicity;

(2) a statement from the referring third-party nominator that [~~the~~] oral health treatment is [~~services are~~] necessary to prevent or reduce the probability of pain, infection, or disease of a dental nature; and

(3) a statement by the applicant or the person responsible for the applicant's support that:

(A) treatment benefits [~~services~~] are requested;

(B) - (C) (No change.)

(D) the applicant or the person responsible for the applicant's support is financially unable to pay for all or part of the cost of the necessary oral health treatment benefits [~~services~~].

(c) Each applicant who will be referred for oral health treatment benefits [~~services~~], as described in §49.7 of this title (relating to Eligibility Requirements to Receive FFS Oral Health Treatment Benefits [~~Services~~]), must have his/her application prior authorized in accordance with [~~program~~] policies and procedures, as defined in the manual [~~Manual and any updates, changes, and amendments~~].

(d) The denial of any application must be in writing and must include the reason(s) for such denial. Unless the application is denied because Oral Health Program [~~program~~] funds are reduced, curtailed, or unavailable, the individual applying for oral health treatment benefits [~~services~~] has the right to an administrative review and a due process hearing in accordance with Subchapter D of this chapter (relating to Appeals Process for FFS Oral Health Treatment Benefits and Services).

(e) An individual has the right to reapply for FFS oral health treatment benefits [~~program coverage~~] at any time when there is a change of situation or condition.

§49.6. Eligibility Requirements for Referral for FFS Oral Health Treatment Benefits.

(a) In order for a person to be eligible for referral for oral health treatment benefits [~~services~~], the applicant must meet the following criteria:

(1) - (2) (No change.)

(b) The person must establish a financial need for oral health treatment benefits [~~services~~], which is based on family income, in accordance with the manual [~~program policies, procedures, and the Manual~~].

(1) - (2) (No change.)

(3) Income guidelines are based on current United States Department of Agriculture [~~(USDA)~~] poverty guidelines for determining eligibility for free meals (e.g., school free lunch program guidelines), which are incorporated by reference.

§49.7. Eligibility Requirements to Receive FFS Oral Health Treatment Benefits [~~Services~~].

(a) Following prior authorization of an application in accordance with §49.5 of this title (relating to Application Process for FFS Oral Health Treatment Benefits), an applicant will be referred for a dental examination to determine whether the applicant is eligible to receive oral health treatment benefits [~~services~~]. With the exception described in §49.13 of this title (relating to FFS Oral Health Treatment Services by Non-Providers [~~Non-providers~~]), a prior authorized applicant will be referred to a provider for this examination.

(1) The examining provider must certify to the department that he/she has examined the applicant and that the applicant is eligible to receive oral health treatment benefits [~~services~~] in accordance with the manual [~~program policies and procedures, program priorities, and the Manual~~].

(A) If the applicant meets the eligibility requirements to receive oral health treatment benefits [~~services~~], the provider will perform the treatment [~~services~~] in accordance with the manual [~~program policies, procedures, and the Manual~~].

(B) If the applicant does not meet the eligibility requirements to receive oral health treatment benefits [~~services~~], the provider will be paid only for the examination services provided, in accordance with the manual [~~program policies, procedures, and the Manual~~].

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the final determination concerning an applicant's eligibility to receive oral health treatment benefits [~~services~~] is made by the state dental director, in accordance with the manual [~~program policies, procedures, and the Manual~~].

(b) The applicant's initial eligibility date shall be the date upon which the application was prior authorized, as described in §49.5 of this title, and will be effective for the remainder of the state fiscal year. Eligibility must be re-established for any subsequent state fiscal year in which oral health treatment benefits [~~services~~] are sought, in accordance with the policies, procedures, and Oral Health Program [~~program~~] priorities in effect at that time. To maintain eligibility for oral health treatment benefits [~~services~~] throughout a state fiscal year, the individual must continue to meet the eligibility requirements set forth in §49.6 of this title (relating to Eligibility Requirements for Referral for FFS Oral Health Treatment Benefits).

§49.8. Denial, Modification, Suspension, and Termination of FFS Oral Health Treatment Benefits [~~Services~~].

(a) Any person requesting or receiving oral health treatment benefits [~~services from the program~~] may be notified that such benefits [~~services~~] may be denied, modified, suspended, or terminated if:

(1) - (3) (No change.)

(4) obligated reimbursement to the Oral Health Program [~~program~~] is not provided;

(5) Oral Health Program [~~program~~] funds are reduced or curtailed; or

(6) Oral Health Program [~~program~~] priorities are modified.

(b) The Oral Health Program [~~program~~] will notify in writing the applicant or recipient or the person legally obligated to support the applicant or recipient of the action proposed to be taken and the reasons for such proposed action. The applicant or recipient shall have the right to an administrative review and/or a due process hearing in accordance with Subchapter D of this chapter (relating to Appeals Process for FFS Oral Health Treatment Benefits and Services) unless the action resulted from the reduction or cessation of oral health treatment benefits [~~program~~] funds.

§49.9. Financial Obligations and Recovery of Costs for FFS Oral Health Treatment Benefits.

(a) An individual is not eligible to receive oral health treatment benefits [~~services~~] furnished under [~~by~~] the Act to the extent that the individual or any person who has the legal obligation to support the individual is eligible for some other benefit that would pay for all or part of the benefits [~~services~~].

(b) An individual who applies for or receives oral health treatment benefits [~~services~~] furnished under the Act must inform the department at the time of application and at any time during a period of eligibility to receive oral health treatment benefits [~~services~~] of any other benefit to which the individual or any person who has the legal obligation to support the individual may be entitled.

(c) An individual who has received oral health treatment benefits [~~services~~] covered by some other benefit, or any person who has a legal obligation to support that individual, must reimburse the department to the extent of the oral health treatment benefits [~~services~~] furnished when the other benefit is received.

(d) The eligibility requirement in subsection (a) of this section may be waived by the state dental director [~~commissioner~~] in certain individually considered cases where its enforcement will deny oral health treatment benefits [~~services~~] to a class of otherwise eligible individuals because of conflicting state, local, or federal laws or regulations.

(e) The department may recover the cost of oral health treatment [~~services~~] provided under the Act from:

(1) a person who does not pay or reimburse the department as required under [~~by~~] the Act and the rules in this chapter; or

(2) (No change.)

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-201300307
Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-6972

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SUBCHAPTER C. PROVIDER PARTICIPATION IN FFS ORAL HEALTH TREATMENT BENEFITS

25 TAC §§49.10 - 49.15

STATUTORY AUTHORITY

The amendments are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001; and Health and Safety Code, Chapter 43, which authorizes the department to provide comprehensive oral health services to eligible individuals. The review of the rules implements Government Code, §2001.039.

The amendments affect Health and Safety Code, Chapters 43 and 1001; and Government Code, Chapter 531.

§49.10. Provider Participation Requirements to Provide FFS Oral Health Treatment Services.

The department adopts by reference the manual, which includes all applicable policies, procedures, and any updates, changes, and amendments. A copy of the manual is provided to each participating provider. Additional copies can be obtained by contacting the Department of State Health Services, Oral Health Program, Mail Code 1938, P.O. Box 149347, Austin, Texas 78714-9347, or by email at dental@dshs.state.tx.us. Providers must meet the following criteria in order to provide FFS oral health treatment services [~~participate in the program~~]:

(1) agree to comply with all applicable program policies, procedures, rules, and requirements[~~, and the Manual~~];

(2) agree to accept FFS oral health treatment benefit [~~program~~] fees as payment in full;

(3) (No change.)

(4) ensure that [~~program~~] recipients of FFS oral health treatment benefits or persons legally responsible to support [~~program~~] recipients of FFS oral health treatment benefits are not billed for the difference between the provider's regular fees and those paid by the Oral Health Program [~~program~~]; and

(5) be licensed to practice dentistry in Texas and in good standing with the TSBDE [~~Texas State Board of Dental Examiners. Prospective providers under suspension by the licensing board will not be approved to participate in the program~~].

§49.11. Provider Application and Contract to Provide FFS Oral Health Treatment Services.

A prospective provider who meets the criteria to provide FFS oral health treatment services [~~for participation in the program~~], as described in §49.10 of this title (relating to Provider Participation Requirements to Provide FFS Oral Health Treatment Services), is eligible to contract with the department to provide oral health treatment benefits [~~services~~]. To apply for program participation, a prospective provider must, after receiving information on the program including the schedule of current fees, sign a contract [~~letter of agreement (contract)~~] with the department. After the contract is properly executed, the prospective provider will be provided written notice of approval to participate in the FFS program and a copy of the program manual [~~Manual~~].

§49.12. FFS Oral Health Treatment Services Provider Termination.

(a) The contract between the provider and the department may be terminated without cause by either party with a 30-day [~~30 days~~] written notice. The department may modify, suspend, or terminate the contract of any provider [~~from the program~~] for due cause. Due cause includes but is not limited to:

(1) (No change.)

(2) suspension or revocation of the provider's license by the TSBDE [~~Texas State Board of Dental Examiners~~];

(3) disciplinary action(s) taken by the TSBDE [~~Texas State Board of Dental Examiners~~];

(4) - (5) (No change.)

(6) any violation of [~~program~~] policies, procedures, rules, or requirements; or

(7) (No change.)

(b) - (c) (No change.)

(d) Subsections (b) and (c) of this section do not apply if a contract is canceled by the department because of exhaustion of funds, [~~if the contract~~] expires according to its terms, or is otherwise voided by law [~~if the contract is canceled because program services are restricted or eliminated due to limited or unavailable funds~~].

§49.13. FFS Oral Health Treatment Services by Non-Providers.

The department may pay a non-provider for emergency care, in accordance with the manual [~~program policies, procedures, and the Manual~~], in cases where oral health treatment benefit [~~program~~] providers are not available or able to provide the emergency care and when delay in providing care would be detrimental to the recipient's health.

§49.14. Payment of FFS Oral Health Treatment Services Claims.

(a) Payment will not be made to providers or non-providers for services not authorized in accordance with the manual [~~program policies, procedures, the Manual,~~] and the rules in this chapter. Payment for any service may be made only after the service has been delivered.

(b) Provider claims will be processed and considered for payment in accordance with the manual [~~program policies, procedures, and the Manual~~]. Claims will be denied if the claim:

(1) (No change.)

(2) is not submitted in accordance with the manual [~~program policies, procedures, and the Manual~~].

(c) A provider claim that has been denied may be reconsidered for payment if the provider resubmits the claim with appropriate corrections, within 30 business days, or requests an administrative review, as described in §49.16 of this title (relating to Administrative Review). In order to receive an administrative review of the denied claim, the provider must request the administrative review in writing and return the claim, with the alleged error identified, to the Oral Health Program [~~OHP~~] no later than 20 business days after the date of the notice of denial, accompanied by appropriate documentation for review.

§49.15. Administrative Sanctions.

Any provider who fails to provide and maintain quality services, fails to meet or exceed [~~or~~] dentally accepted standards, or who violates [~~program~~] policies and[~~,~~] procedures[~~, the Manual,~~] or the rules in this chapter, may be subject to administrative sanctions, as determined appropriate by the state dental director[~~, in accordance with program policies and procedures~~]. A provider may request an administrative review, as described in §49.16 of this title (relating to Administrative Review), if a written request is received by the Oral Health Program [~~OHP~~] no later than 20 business days after the date of the notice of administrative sanction.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa Hernandez
General Counsel
Department of State Health Services
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SUBCHAPTER D. APPEALS PROCESS FOR FFS ORAL HEALTH TREATMENT BENEFITS AND SERVICES

25 TAC §§49.16 - 49.18

STATUTORY AUTHORITY

The amendments are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001; and Health and Safety Code, Chapter 43, which authorizes the department to provide comprehensive oral health services to eligible individuals. The review of the rules implements Government Code, §2001.039.

The amendments affect Health and Safety Code, Chapters 43 and 1001; and Government Code, Chapter 531.

§49.16. Administrative Review.

(a) (No change.)

(b) No later than 20 business days after the date of notice of the action, conflict, sanction, or claim denial, the aggrieved person may request an administrative review. The request must be made in writing and received by the Oral Health Program [~~OHP~~] within the required timeframe. Additional information bearing on the decision to be reviewed may be submitted at this time. Failure to make a timely request for an administrative review is deemed to be a waiver of the right to administrative review.

(c) Upon timely receipt of a request for an administrative review, an administrative review team will review and consider all relevant materials submitted by the Oral Health Program [~~program~~] and the aggrieved person. The administrative review team will affirm or reverse the decision being appealed and respond in writing to the aggrieved person, giving the reason(s) for the decision.

§49.17. Due Process Hearing.

(a) - (b) (No change.)

(c) The affected individual has 20 days after receiving the notice to request a hearing on the proposed action. It is a rebuttable presumption that a notice is received five days after the date of the notice. Unless the notice letter specifies an alternative method, a request for a hearing shall be made in writing and mailed to the following address: Department of State Health Services, Oral Health Program, Mail Code 1938, P.O. Box 149347, Austin, Texas 78714-9347. If an individual who is offered the opportunity for a hearing does not request a hearing within the prescribed time for making such a request, the individual is deemed to have waived the hearing and the action may be taken.

[(c) A request for a due process hearing must be made in writing and received by the OHP no later than 20 business days after the date of the notice or decision that the aggrieved person wants to appeal, as described in subsection (a) of this section. Failure to make a timely request for a due process hearing is deemed to be a waiver of the right to a due process hearing and the department's decision is upheld and implemented.]

§49.18. Hearing Process.

Appeals and administrative hearings will be conducted in accordance with the department's fair hearing rules at §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures).

[(a) Upon receiving a written request for a due process hearing, the department will assign a hearing examiner who will set a date, time, and place for the hearing. The hearing will not be conducted under the contested case provisions of the Administrative Procedure Act, Texas Government Code, Chapter 2001, but will include the following:]

[(1) a written notice to the aggrieved person of the matters asserted and the basis for the proposed action or conflict;]

[(2) an opportunity for the aggrieved person to receive a fair hearing by a hearing examiner, either by telephone conference call or in person, under §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures);]

[(3) an opportunity for the aggrieved person to be represented by counsel or other representative;]

[(4) an opportunity for the aggrieved person or his/her representative to be heard in person, to call witnesses, and to present documentary evidence;]

[(5) an opportunity for the aggrieved person to cross-examine witnesses;]

[(6) a written recommendation by the hearing examiner to the commissioner, setting forth the reasons for the recommendation and the evidence upon which the recommendation is based; and]

[(7) the final written decision to be made by the commissioner.]

[(b) The department's administrative decision is final in a due process hearing and is not subject to further appeal.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa Hernandez
General Counsel
Department of State Health Services
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER D. RISK-BASED CAPITAL AND SURPLUS AND OTHER REQUIREMENTS

28 TAC §7.402

The Texas Department of Insurance proposes amendments to §7.402, concerning risk-based capital and surplus requirements for insurers and health maintenance organizations (HMOs).

The proposed amendments to §7.402 adopt by reference the 2012 National Association of Insurance Commissioners (NAIC) risk-based capital formulas and instructions in order to implement and update the risk-based capital and surplus requirements for year-end 2012 for property and casualty insurers, life insurance companies, HMOs and insurers filing the NAIC Health Annual Statement Blank, and fraternal benefit societies. Specifically, proposed amended §7.402(d) adopts by reference: (1) the 2012 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies; (2) the 2012 NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies; (3) the 2012 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies; and (4) the 2012 NAIC Health Risk-Based Capital Report including Overview and Instructions for Companies. Proposed amended §7.402(d) also deletes reference to the 2011 versions of these documents.

The proposed amendments to §7.402 are necessary to regulate risk-based capital and surplus requirements for insurers and HMOs subject to §7.402 (collectively referred to as "carriers" in this proposal). The risk-based capital requirement is a method of ensuring that a carrier has an appropriate level of policyholder surplus after taking into account the underwriting, financial, and investment risks of a carrier. The updated NAIC risk-based capital formulas listed above provide the department with a widely used regulatory tool to identify the minimum amount of capital and surplus appropriate for a carrier to support its overall business operations in consideration of its size and risk exposure.

The 2012 NAIC risk-based capital formulas and instructions largely do not vary from the 2011 NAIC risk-based capital formulas and instructions though the 2012 version does contain minor changes, including new requirements for all carriers regarding deferred tax assets. The department also notes that the NAIC amended its Risk-Based Capital for Insurers Model Act in November 2011 to adjust the threshold at which a trend test applies to fraternal benefit societies and life insurers from 2.5 times the authorized control level to 3.0 times the authorized control level. Pursuant to this change, the NAIC has included a dual reporting presentation in its 2012 Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies and 2012 Life Risk-Based Capital Report Including Overview and Instructions for Companies that, respectively, requires fraternal benefit societies and life insurers to show whether 2.5 or 3.0 is the regulatory basis of their domiciliary state and to show what level of action would be indicated based on the two levels. Importantly, while the department by adopting by reference the 2012 Fraternal and Life risk-based capital formulas and instructions is requiring fraternal benefit societies and life insurers to comply with this dual reporting requirement, the department is not proposing to modify the trend test requirements provided in §7.402(g)(5) or §7.402(g)(8) for life insurers or fraternal benefit societies. Specifically, §7.402(g)(5) and §7.402(g)(8) will still,

respectively, subject a life insurer or fraternal benefit society to a trend test if its total adjusted capital to authorized control level risk-based capital is between 200 percent and 250 percent, not 300 percent. However, for consistency with the NAIC Model Act, the department may explore adjusting these thresholds to 300 percent for year-end 2013 or later in a subsequent rulemaking proposal.

The department has also proposed several non-substantive amendments to §7.402 to conform to current agency style and nomenclature.

Copies of the documents proposed in §7.402 for adoption by reference are available for inspection in Financial Analysis, Financial Regulation Division, Texas Department of Insurance, William P. Hobby Jr. State Office Building, Tower Number III, Third Floor, Mail Code 303-1A, 333 Guadalupe, Austin, Texas 78701.

Mr. Danny Saenz, deputy commissioner, Financial Regulation Division, has determined that, for each year of the first five years the proposed amended section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section. The amended section will have no effect on local employment or local economy.

Mr. Saenz also has determined that for each year of the first five years the proposed amended section is in effect, the anticipated public benefit will be that the department will be able to more effectively utilize existing resources in the review of the operations and financial condition of carriers, to more efficiently monitor solvency of the carriers subject to the proposal, and to implement the most current risk-based capital requirements. The amended section will enable the department to administer appropriate and proactive regulatory actions to protect the interests of the public against carriers whose financial condition may potentially be hazardous.

The proposed amendments to §7.402 contain the same substantive risk-based capital and surplus requirements of existing §7.402 for year-end 2011 except that §7.402 as proposed requires use of the 2012 NAIC risk-based capital formulas and instructions. But, as described above, the 2012 risk-based formulas and instructions have only minor variations from 2011 risk-based formulas and instructions, so carriers previously subject to the rule will incur the same types of costs for year-end 2012 to comply with these requirements that were incurred for year-end 2011. The department also does not anticipate that any new, incremental costs will be incurred by carriers that were previously subject to §7.402 as a result of the proposed amendments. The proposed amendments also subject no new classes of carriers to the requirements of §7.402, and so the proposed amendments do not impose costs on any new classes of carriers.

Government Code §2006.002(c) requires that if a proposed rule may have an adverse economic impact on small and micro-businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule.

As detailed above, the department does not anticipate that the proposed amendments to §7.402 will impose any new costs on carriers subject to its requirements, regardless of the carrier's size, so Government Code §2006.002 does not require the department to prepare an economic impact statement and regulatory flexibility analysis because the proposed amendments to §7.402 will not have an adverse economic impact on small or micro-businesses.

The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on March 11, 2013, to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Danny Saenz, Deputy Commissioner, Financial Regulation Division, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments are proposed under the Insurance Code §§404.004, 404.005, 441.005, 441.051, 822.210, 822.211, 841.205, 841.410(b) and (c), 841.414(c), 843.404, 884.054, 884.206, 885.401, 982.105, 982.106, and 36.001. Section 404.004 provides that the commissioner's authority to increase any capital and surplus requirements prevails over the general provisions of the Insurance Code relating to specific companies, and §404.005 authorizes the commissioner to set standards for evaluating the financial condition of an insurer. Under §441.005, the commissioner may adopt reasonable rules as necessary to implement and supplement the purposes of Chapter 441. Section 441.051 specifies "the circumstances in which an insurer is considered insolvent, delinquent, or threatened with delinquency" and includes certain statutorily specified conditions, including if an insurer's required surplus, capital, or capital stock is impaired to an extent prohibited by law. Section 822.210 authorizes the commissioner to adopt rules or guidelines to require an insurer to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 822.211 specifies the actions the commissioner may take if an insurance company does not comply with the capital and surplus requirements of Chapter 822. Section 841.205 authorizes the commissioner to adopt rules or guidelines to require an insurer that writes life or annuity contracts or assumes liability on or indemnifies one person for any risk under an accident and health insurance policy, or a combination of these policies, in an amount that exceeds $10,000 to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 841.410(b) and (c) require a limited purpose subsidiary life insurance company to comply with the risk-based capital requirements adopted by the commissioner by rule, and maintain risk-based capital in an amount that is at least equal to 300 percent of the authorized control level of risk-based capital adopted by the commissioner. Section 841.414(c) requires a limited purpose subsidiary life insurance company annually to file with the commissioner a report of the limited purpose subsidiary life insurance company's risk-based capital level as of the end of the preceding calendar year containing the information required by the risk-based capital instructions adopted by the commissioner. Section 843.404 authorizes the commissioner

to adopt rules to require a health maintenance organization to maintain capital and surplus levels in excess of statutory minimum levels to ensure financial solvency of health maintenance organizations for the protection of enrollees. Section 884.054 specifies the capital stock and surplus requirements for stipulated premium insurance companies. Section 884.206 authorizes the commissioner to adopt rules to require an insurer that writes or assumes life insurance, annuity contracts or accident and health insurance for a risk to one person in an amount that exceeds $10,000 to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 885.401 requires each fraternal benefit society to file an annual report on the society's financial condition, including any information the commissioner considers necessary to demonstrate the society's business and method of operation, and authorizes the department to use the annual report in determining a society's financial solvency. Section 982.105 specifies the capital, stock, and surplus requirements for foreign or alien life, health, or accident insurance companies. Section 982.106 specifies the capital, stock, and surplus requirements for foreign or alien insurance companies other than life, health, or accident insurance companies. Section 36.001 authorizes the commissioner to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This proposal affects the following statutes: Insurance Code §§404.004, 404.005, 441.005, 441.051, 822.210, 822.211, 841.205, 841.410(b) and (c), 841.414(c), 843.404, 884.054, 884.206, 885.401, 982.105, and 982.106.

§7.402. Risk-Based Capital and Surplus Requirements for Insurers and HMOs.

(a) - (b) (No change.)

(c) Definitions. The following words and terms, when used in this section, [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) Annual financial statement--The annual statement blank to be used by insurance companies, as promulgated by the NAIC and as adopted by the commissioner.

(2) Authorized control level--The result determined under the RBC formula in accordance with the RBC instructions.

(3) NAIC--National Association of Insurance Commissioners.

(4) RBC--Risk-based capital.

(5) RBC formula--NAIC risk-based capital formula.

(6) RBC instructions--NAIC Risk-Based Capital Report Including Overview and Instructions for Companies.

(7) Total adjusted capital--An insurer's adjusted statutory capital and surplus as determined under the RBC formula in accordance with the RBC instructions.

(d) Adoption of RBC formula by reference. The commissioner adopts by reference the following, which are available for inspection in the Financial Regulation [~~Analysis~~] Division of the Texas Department of Insurance, William P. Hobby Jr. State Office Building, Tower Number III, Third Floor, Mail Code 303-1A, 333 Guadalupe, Austin, Texas:

(1) The 2012 [~~2011~~] NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(2) The 2012 [~~2011~~] NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(3) The 2012 [~~2011~~] NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(4) The 2012 [~~2011~~] NAIC Health Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(e) Filing requirements. All companies subject to this section must [~~are required to~~] file electronic versions of the 2012 [~~2011~~] RBC reports and any supplemental RBC forms and reports with the NAIC in accordance with and by the due dates specified in the RBC instructions.

(f) Conflicts. In the event of a conflict between the Insurance Code, any rule of the department or any specific requirement of this section, and the RBC formula and/or the RBC instructions, the Insurance Code, rule or specific requirement of this section takes [~~shall take~~] precedence and in all respects controls [~~control~~]. It is the express intent of this section that the adoption by reference of the NAIC Risk-Based Capital Reports Including Overview and Instructions for Companies does not repeal or modify or amend any rule of the department or any provision of the Insurance Code.

(g) Actions of commissioner. The level of risk-based capital is calculated and reported annually. Depending on the results computed by the risk-based capital formula, the commissioner of insurance may take a number of remedial actions, as considered necessary. The ratio result of the total adjusted capital to authorized control level risk-based capital requires the following actions related to an insurer within the specified ranges:

(1) An insurer reporting total adjusted capital of 150 percent to 200 percent of authorized control level risk-based capital institutes a company action level under which the insurer must prepare a comprehensive financial plan that identifies the conditions that contribute to the company's financial condition. The plan must contain proposals to correct areas of substantial regulatory concern and projections of the company's financial condition, both with and without the proposed corrections. The plan must list the key assumptions underlying the projections and identify the concerns associated with the insurer's business. The RBC plan is to be submitted within 45 days of filing the RBC report with the NAIC. After review, the commissioner will notify the company if the plan is satisfactory or not satisfactory. In the event the commissioner notifies the company that the plan is not satisfactory, the company must [~~shall~~] prepare a revised plan and submit it to the commissioner. Failure to file this comprehensive financial plan triggers the next lower action level described in this subsection.

(2) An insurer reporting total adjusted capital of 100 percent to 150 percent of authorized control level risk-based capital triggers a regulatory action level initiative. At this action level, an insurance company must [~~is also required to~~] file an RBC plan or revised RBC plan within 45 days of filing the RBC report with the NAIC, and the commissioner must [~~is required to~~] perform any examinations or analyses to the insurer's business and operations that are [~~is~~] deemed necessary. The commissioner may issue orders specifying corrective actions to be taken or may require other appropriate action.

(3) - (8) (No change.)

(h) (No change.)

(i) Prohibition on use in ratemaking. The RBC instructions and any related filings are intended solely for use by the commissioner in monitoring the solvency of insurers subject to this section and in taking corrective action with respect to insurers and must [~~shall~~] not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that an insurer or any affiliate is authorized to write.

(j) Limitations. The [~~In no event shall the~~] requirements of this section do not reduce the amount of capital and surplus otherwise required by the Insurance Code, Department rules, or by authority of the commissioner of insurance as provided by law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sara Waitt
General Counsel
Texas Department of Insurance
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CHAPTER 34. STATE FIRE MARSHAL
SUBCHAPTER M. ADMINISTRATIVE PENALTIES

28 TAC §§34.1301 - 34.1308

The Texas Department of Insurance proposes new Subchapter M, §§34.1301 - 34.1308, concerning disciplinary and enforcement actions and administrative penalties.

This new subchapter is necessary to implement House Bill (HB) 1951, enacted by the 82nd Legislature, Regular Session, effective September 1, 2011. HB 1951 amends Government Code §417.010, concerning disciplinary and enforcement actions and administrative penalties for persons regulated by TDI through the State Fire Marshal's Office (SFMO).

The Sunset Commission's *"Department of Insurance Report to the 82nd Legislature"* (July 2011) made findings and recommendations related to the need for the SFMO to have the authority to enforce penalties against its licensees. One of the recommendations was that the SFMO have authority to enforce penalties against its licensees. The SFMO does not directly issue penalties against licensees. Instead, referrals for violations go through TDI's extensive enforcement process. TDI's enforcement section has established a penalty threshold to prioritize enforcement efforts. Many penalties the SFMO would recommend fall below this threshold. This allows many violators to go unsanctioned. Because of these findings, the Sunset Commission recommended that the Legislature require the commissioner of insurance to establish a penalty matrix for violations by SFMO licensees and to delegate enforcement authority to the SFMO.

Under §417.010 the commissioner by rule may delegate to the state fire marshal the authority to take disciplinary and enforcement actions, including the imposition of administrative penalties in accord with this section, on a person regulated under a law listed under Subsection (a) who violates that law or rule or order adopted under that law. Section 417.010 also states that the commissioner by rule shall adopt a schedule of administrative penalties for violations subject to a penalty under this section to ensure that the amount of an administrative penalty imposed is appropriate to the violation.

The proposed subchapter establishes the procedure and schedule of administrative penalties for violations committed by fire alarm, fire extinguisher, fire sprinkler, and fireworks licensees to ensure that the amount of the administrative penalty imposed is appropriate to the violation. Government Code §417.010(e) allows the state fire marshal to impose an administrative penalty without referring the violation to the department for commissioner action. The proposed administrative penalties are described in Figures §34.1302(a) - (e). These penalties do not cover every potential violation of statute or code. The state fire marshal selected particular violations for the schedule of administrative penalties because of their frequency of occurrence and the limited subjectivity in determining a violation. The state fire marshal selected the proposed administrative penalties in the penalty schedule figures based on average or typical factors in Government Code §417.010(c)(1) - (7). The state fire marshal may deviate from the penalty schedule by consent order. The state fire marshal also has the flexibility to refer a violation described in the schedule of administrative penalties to TDI's enforcement section. Violations referred to enforcement are not limited to the schedule of administrative penalties figures and may exceed those specified in this rule where Government Code §417.010(c)(1) - (7) and Insurance Code §84.022 factors warrant.

Proposed §34.1301 delegates authority to the state fire marshal and states the applicability of the administrative penalties. Proposed §34.1302 specifies which types of disciplinary and enforcement actions are delegated to the state fire marshal. The schedule of administrative penalties in proposed §34.1302 includes fire alarm, fire extinguisher, fire sprinkler, and fireworks licensees regulated by the state fire marshal. Proposed §34.1303 states that a penalty under this subchapter may be combined with other administrative sanctions.

Proposed §34.1304 describes the notice of violation and penalty that the SFMO will provide the alleged licensee. Proposed §34.1305 states that the penalty must be paid or a hearing requested. The licensee has 30 days to either pay the penalty, demonstrate compliance, or request a hearing. The proposed 30 days for the licensee to respond is longer than required by §417.010(f) and Insurance Code §84.042. The state fire marshal must approve the penalty by order. The order must include findings of fact and conclusions of law. Proposed §34.1306 describes the process for requesting a hearing and states that Chapter 2001 of the Government Code applies to proceedings conducted under this subchapter. Section §34.1306 also states that a contested case hearing may include other matters against the licensee. Proposed §34.1307 states that if a person fails to pay a penalty, the state fire marshal may seek additional sanctions or the attorney general may bring an action to collect the penalty. Finally, as required by Government Code §417.010(e), proposed §34.1308 states that a licensee may dispute the penalty under Chapter 84 of the Insurance Code.

FISCAL NOTE. Chris Connealy, state fire marshal, has determined that for each year of the first five years the proposed sections will be in effect, because of TDI's self-leveling method of

finance, there will be no involuntary fiscal implications to state or local government as a result of the enforcement and administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

The proposed rules will result in an increase in administrative penalties collected by TDI. The state fire marshal anticipates that the rule proposal will increase compliance costs for fire alarm, fire extinguisher, fire sprinkler, and fireworks licensees that are in violation of the statutes and rules. Under the proposed schedule of administrative penalties, licensees will have to pay administrative penalties for violations that previously closed with action by TDI. Some local governments, including independent school districts, have fire detection or alarm licenses under Insurance Code Chapter 6002. Any licensee, including a local government that chooses to hold a license, will incur costs only for violations of statute or rules. The penalty amounts are an avoidable cost.

TDI's funding comes from a self-leveling method of finance comprised primarily of maintenance taxes, fees, and assessments collected from its licensees. A similar process applies to the SFMO. Any increase in administrative penalties collected offsets a corresponding need to increase the amount of licensing and registration fees collected from its licensees and registrants. Due to the nature of TDI's self-leveling funding, the proposal will not result in any fiscal impact to TDI or any other entity within state or local government.

PUBLIC BENEFIT/COST NOTE. State Fire Marshal Connealy has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated as a result of the proposal is improved health and safety due to better enforcement of fire alarm, fire extinguisher, fire sprinkler, and fireworks regulations. The adopted schedule of administrative penalties specifies the cost to persons required to comply with the proposal. Whether a licensee is required to pay an administrative penalty depends on its compliance with applicable regulations. Costs for compliance will not vary between the smallest and largest businesses to the extent that administrative violations are uncorrelated with the size of the firm. Although TDI does not believe that the proposed section will have an adverse effect on small and micro businesses, TDI has considered the purpose of the applicable statutes, which is to ensure licensees comply with regulations, and has determined that it is neither legal nor feasible to waive the provisions of the proposed amendments for small or micro businesses.

The requirements in the proposal may result in some costs to fire alarm, fire extinguisher, fire sprinkler, and fireworks firms. The anticipated costs for fire alarm, fire extinguisher, fire sprinkler, and fireworks firms include: (i) costs relating to responding to the alleged violation and (ii) costs relating to the administrative penalty paid.

1. Costs Relating to Responding to the Alleged Violation. With regard to a response to an administrative penalty notice, the costs to comply with proposed §34.1301 would be a separate, non-recurring expense. Based on this fact and TDI's analysis of identified cost factors, TDI estimates that each written response to accept the administrative penalty, request an opportunity to show compliance with all requirements of all applicable law and rules, or make a written request for a hearing on that determination to the SFMO, as required by the proposed subchapter, would cost a licensee between $14 and $16. This cost estimate includes an estimate of 30 minutes of the licensee's time to retrieve and print or copy the proof document or documents, costs of between $.08 and $1.20 for printing or copying the proof document or documents, costs of $.44 to $1.22 for first class postage using the United States Postal Service, and costs of $.05 to $.16 for an appropriately sized envelope. Licensees electing to send documents through certified mail will incur additional costs of $2.95 or more depending on the size of the parcel. Total annual costs for compliance will vary based on the number of administrative penalty responses that the licensee submits.

2. Costs Relating to the Administrative Penalty Paid. The rule specifies the cost of each individual administrative penalty. Total annual costs for compliance will vary based on the amount of administrative penalties that the licensee pays.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Government Code §2006.002(c) requires that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than $6 million in annual gross receipts. Government Code §2006.001(1) defines "micro business" similarly to "small business" but specifies that such a business may not have more than 20 employees. Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined in Government Code §2006.002(b) - (d) for small businesses.

As required by Government Code §2006.002(c), TDI has determined that the proposal may have an adverse economic effect on approximately 15,000 to 16,000 small or micro businesses that are required to comply with the proposed rules. Although TDI is aware that the large majority of fire alarm, fire extinguisher, fire sprinkler, and fireworks firms are small or micro businesses, TDI does not have precise information regarding the number of small or micro registered firms. There are about 17,500 fire alarm, fire extinguisher, fire sprinkler, and fireworks firms regulated under Title 20, Insurance Code and Occupations Code Chapter 2154. TDI bases this number on data collected from registered firms upon certificate of registration renewal regarding the number of individuals employed by the firm, the firm's annual gross receipts, and whether the firm is independently owned and operated. The cost of compliance with the proposal will not vary between large businesses and small or micro businesses, and TDI's cost analysis and resulting estimated costs for insurers in the Public Benefit/Cost Note section of this proposal is equally applicable to small or micro businesses. However, as noted in the Public Benefit/Cost Note section of this proposal, because the costs attributable to the rule result from a registered firm's operation of branch offices, it is anticipated that the proposal is less likely to have a cost impact on small or micro businesses because these businesses are less likely to operate branch offices.

In accord with Government Code §2006.002(c-1), TDI has determined that, although the proposal may have an adverse economic effect on small or micro businesses required to comply with the proposal, the proposal does not require a regulatory flexibility analysis that is mandated by §2006.002(c)(2) of the Government Code. Section 2006.002(c)(2) requires that a state

agency, before adopting a rule that may have an adverse economic effect on small businesses, prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Section 2006.002(c-1) of the Government Code requires that the regulatory flexibility analysis "...consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses."

The purpose of the proposed requirements relating to licensing procedure is to facilitate the SFMO's efficient and orderly administration of the licensing, oversight, and regulation of the fire alarm, fire extinguisher, fire sprinkler, and fireworks industries. The Sunset Commission's July 2011 Final Report noted that in fiscal year 2009, because many penalties are below TDI's broader enforcement threshold, only 91 of 748 valid complaints against its licensees were referred to TDI's enforcement section, resulting in 52 sanctions. The efficient and orderly regulation of the fire alarm, fire extinguisher, fire sprinkler, and fireworks industries is necessary to protect the health and safety of Texans. The intent of Government Code §417.010 requires that the penalty amounts imposed be punitive. TDI has determined in accord with §2006.002(c-1) of the Government Code that minimizing the adverse impacts on small businesses and micro businesses of administrative penalties assessed for violations of the statute or TDI rules is not consistent with ensuring the health, safety, and environmental and economic welfare of the state. The proposal substantially contributes to the health and safety of Texas citizens by facilitating the orderly administration of the licensing process for persons regulated under Title 20, Insurance Code, and Chapter 2154, Occupations Code. There are no known regulatory alternatives to the proposed changes in the licensing and administrative review process in this proposal that will sufficiently protect the health and safety of Texans using the services of small or micro fire extinguisher, fire alarm firms, fire sprinkler, or fireworks firms.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, so, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on March 11, 2013, to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Chris Connealy, State Fire Marshal, Mail Code 112-FM, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The new subchapter is proposed pursuant to Government Code §417.010 and Insurance Code §36.001. Government Code §417.010 provides that the commissioner by rule shall adopt a schedule of administrative penalties for violations subject to a penalty under this section to ensure that the amount of an administrative penalty is appropriate to the violation. Further, the commissioner by rule shall delegate to the state fire marshal the authority to take disciplinary and enforcement actions, including the imposition of administrative penalties. The commissioner must specify which types of disciplinary and enforcement actions are delegated to the state fire marshal. The commissioner must also outline the process through which the state fire marshal may impose administrative penalties or take other disciplinary and enforcement actions.

Government Code §417.010 also requires the commissioner to adopt by rule a schedule of administrative penalties for violations subject to a penalty under this section to ensure that the amount of an administrative penalty is appropriate to the violation. The section requires TDI to provide the schedule of administrative penalties to the public on request. The amount of an administrative penalty imposed must be based on the factors specified in §417.010(c). Section 417.010 also authorizes the state fire marshal to, in lieu of cancelling, revoking, or suspending a license or certificate of registration, impose on the holder of the license or certificate of registration an order directing the holder to cease and desist from a specified activity, pay an administrative penalty imposed under this section, or make restitution to a person harmed by the holder's violation of an applicable law or rule. Pursuant to §417.010, the state fire marshal is required to impose an administrative penalty under this section in the manner prescribed under Subchapter B, Chapter 84, Insurance Code. The state fire marshal may impose an administrative penalty under this section without referring the violation to TDI for commissioner action.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statute is affected by this proposal: Government Code §417.010.

§34.1301. Imposition of Penalty.

(a) The commissioner delegates to the state fire marshal the authority to take disciplinary and enforcement action described in this subchapter.

(b) The state fire marshal may impose an administrative penalty as described in §34.1302 of this title (relating to Schedule of Administrative Penalties) against a person who violates:

(1) a provision of Title 20, Insurance Code, including Chapter 6001, 6002, or 6003;

(2) Occupations Code Chapter 2154; or

(3) a rule appearing in Subchapter E, F, G, or H of this chapter (relating to Fire Extinguisher and Installation, Fire Alarm Rules, Fire Sprinkler Rules, and Storage and Sale of Fireworks, respectively).

(c) As used in this subchapter, the term "licensee" includes all persons licensed, registered, or otherwise regulated by Title 20, Insurance Code or Occupations Code Chapter 2154.

(d) The state fire marshal may refer a violation of subsection (b)(1), (2), or (3) of this section to the Texas Department of Insurance, Enforcement Section instead of imposing an administrative penalty under this subchapter. Sanctions under Insurance Code Chapters 82, 83, and 84, and Occupations Code Chapter 2154 are not restricted to the administrative penalty amounts under §34.1302 of this title.

(e) For violations described in §34.1302 of this title, the state fire marshal may enter into a consent order imposing an administrative penalty that deviates from this subchapter.

§34.1302. Schedule of Administrative Penalties.

(a) the Fire Extinguisher Penalty Schedule specified as follows.
Figure: 28 TAC §34.1302(a)

(b) the Fire Alarm Penalty Schedule specified as follows.
Figure: 28 TAC §34.1302(b)

(c) the Fire Protection Sprinkler Penalty Schedule specified as follows.
Figure: 28 TAC §34.1302(c)

(d) the Fireworks Indoor Retail Stand Penalty Schedule specified as follows.
Figure: 28 TAC §34.1302(d)

(e) the Fireworks Retail Stand Penalty Schedule specified as follows.
Figure: 28 TAC §34.1302(e)

§34.1303. Combined Sanctions.

An administrative penalty imposed under this subchapter may be combined with a proceeding to impose other administrative sanctions. The requirements of this subchapter apply to administrative penalties imposed under this subchapter.

§34.1304. Notice of Violation and Penalty.

After investigation of a possible violation and the facts surrounding the possible violation the state fire marshal's office may issue to the licensee a notice of alleged violation stating:

(1) a brief summary of the alleged violation;

(2) the amount of the recommended administrative penalty; and

(3) that the licensee has the right to a hearing to contest the alleged violation, the amount of the penalty, or both.

§34.1305. Penalty to be Paid or Hearing Requested.

(a) No later than the 30th day after the date the licensee receives the notice of alleged violation and recommended administrative penalty, the licensee may:

(1) accept the department's determination and recommended administrative penalty;

(2) request an opportunity to show compliance with all requirements of all applicable law and rules. The state fire marshal's office may grant the licensee an additional period in which to show compliance; or

(3) the licensee may request a hearing.

(b) If the licensee accepts the state fire marshal's office determination and agrees to pay the penalty, the state fire marshal by order must approve the determination.

(c) The state fire marshal order must include findings of fact and conclusions of law supporting the penalty, and must be delivered to the licensee by certified mail.

(d) The licensee must pay the administrative penalty no later than the 30th day after the date of the state fire marshal's order.

§34.1306. Request for Hearing.

If the licensee requests a hearing, the state fire marshal will refer the matter to the Texas Department of Insurance, Enforcement Section. The state fire marshal may assert other matters and claims against the licensee at the hearing and seek any disciplinary action available under Insurance Code Chapters 82, 83, and 84, Occupations Code Chapter 2154, and this chapter, including additional penalty amounts in excess of the penalty schedule amount.

§34.1307. Failure to Pay Penalty.

If a licensee fails to pay the administrative penalty, the state fire marshal may seek additional sanctions or the attorney general may bring an action to collect the penalty.

§34.1308. Dispute of Penalty.

A licensee may dispute the imposition of the penalty or the amount of the penalty imposed in the manner prescribed by Insurance Code Chapter 84, Subchapter C.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2013.

TRD-201300230
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 463-6327

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PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 130. IMPAIRMENT AND SUPPLEMENTAL INCOME BENEFITS SUBCHAPTER A. IMPAIRMENT INCOME BENEFITS

28 TAC §130.1

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) proposes to amend §130.1, relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment. The purpose of this proposed amendment is to clarify the consequence of noncompliance with 28 Texas Administrative Code (TAC) §130.1(c)(3) *(see State Office of Risk Management v. Joiner, 363 S.W.3d 242 (Tex. App.--Texarkana 2012, pet. filed))*. The proposed amendment clarifies that an impairment rating is invalid if it is based on the injured employee's condition on a date that is not the maximum medical improvement (MMI) date. The proposed amendment reiterates the Division's longstanding interpretation of §130.1(c)(3), as reflected in numerous appeals panel decisions. This proposal further clarifies that an impairment rating and its corresponding MMI date must be on a Report of Medical Evaluation to be valid.

Section 130.1 governs the certification of MMI, determination of permanent impairment, and assignment of an impairment rating. Except as provided by Labor Code §408.104, relating to Maximum Medical Improvement After Spinal Surgery, an injured employee reaches MMI on the earliest date after which, based

on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated (clinical MMI), or at the expiration of 104 weeks from the date on which income benefits begin to accrue (statutory MMI), whichever happens first. When a doctor certifies that an injured employee has reached MMI, §130.1(c)(2) requires the doctor to assign an impairment rating for the current compensable injury using the rating criteria contained in the appropriate edition of the AMA Guides to the Evaluation of Permanent Impairment, published by the American Medical Association. The impairment rating reflects the percentage of permanent impairment of the whole body resulting from the current compensable injury. Section 130.1(c)(3) requires the assignment of an impairment rating for the current compensable injury to be based on the employee's condition as of the MMI date considering the medical record and the certifying examination. An impairment rating is designed to capture an injured employee's condition on the MMI date because this accurately reflects the permanent loss suffered by the employee, for which compensation is provided in the form of impairment income.

These proposed amendments first clarify the consequence of noncompliance with §130.1. The proposed amendments, which are more fully described below, provide that an impairment rating based on a date other than the MMI date is invalid and cannot be adopted for settlement, at hearing, or at trial. These proposed amendments are necessary in order to clarify the Division's longstanding interpretation of §130.1(c)(3). These amendments do not affect an insurance company's obligation to pay benefits under Labor Code §410.169, any other division order, or under §408.0041(f).

Under this rule, an impairment rating is invalid if it is based on the injured employee's condition on a date that is not the MMI date. An impairment rating based on a date in time before the MMI date is unreliable, for instance, because it fails to account for intervening changes in an employee's condition. An impairment rating based on a date in time after the MMI date is also unreliable. If statutory MMI has been reached, then an impairment rating assigned to a later date might take into account changes in an injured employee's condition after the statutory cut-off date, which is prohibited. If clinical MMI was thought to have been reached at an earlier date, and an impairment rating is assigned to a later date in time, then the initial clinical MMI date would need to be reevaluated to determine when the injured employee in fact reached MMI. In such a case, the MMI date, the impairment rating, or both may be inaccurate. Therefore, it is appropriate to require that an impairment rating be based on the MMI date to ensure reliable, consistent results.

The proposed amendments further clarify that an impairment rating and the corresponding MMI date must be included in the Report of Medical Evaluation to be valid and to be adoptable for settlement, at hearing, or at trial. This proposed amendment is necessary to clarify that an MMI date certified on one Report of Medical Evaluation cannot be associated with an impairment rating assigned on a different Report of Medical Evaluation. A certification of MMI and an assigned impairment rating must be submitted to the Division on a valid Form DWC-069, Report of Medical Evaluation, to be considered valid for the purpose of adoption. If an impairment rating is not submitted on a valid Report of Medical Evaluation, then that impairment rating cannot be adopted for settlement, at a hearing, or at trial.

The proposed rule provides the administrative benefit of having an adoptable MMI and impairment rating that a designated doctor has certified as corresponding to each other. This assists the Division's adjudication of disputes because it prohibits matching one doctor's certified MMI date to another doctor's assigned impairment rating. As a result, system participants can more easily determine which MMI dates and corresponding impairment ratings might be adoptable for settlement, at hearing, or at trial.

The Division published an informal draft of the amended section on the Division's website on November 28, 2012, and received ten informal comments.

Proposed Amended §130.1.

The proposed amendment to §130.1 updates and clarifies the rule. First, the proposed amendment updates §130.1 by replacing "commission" with "division" to reflect the change in name from Texas Workers' Compensation Commission to the Division of Workers' Compensation. The proposed amendment also updates the title of §180.23 as referenced in subsection (c)(4) to reflect recent changes to that title.

Second, the proposed amendment clarifies current subsection (b)(2), which provides that MMI must be certified before an impairment rating is assigned. The proposed amendment to subsection (b)(2) adds that the impairment rating must be assigned for the injured employee's condition on the date of MMI, otherwise the impairment rating is invalid. This is necessary to make clear that an impairment rating cannot be adopted unless the impairment rating reflects the employee's condition on the date of MMI. An impairment rating assigned to a date in time before or after the date of MMI is not adoptable.

The proposed amendment to subsection (b)(2) adds that an impairment rating and the corresponding MMI date must be included in the Report of Medical Evaluation to be valid. This is necessary because the requirements in §130.12(c)(1) - (3) regarding the Report of Medical Evaluation also affect the validity and finality of an MMI date and impairment rating. If an impairment rating is not specified on a Report of Medical Evaluation, then the impairment rating is invalid.

Third, the proposed amendment clarifies current subsection (c)(3), which states that assignment of an impairment rating for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination. The proposed amendment to subsection (c)(3) replaces "as of" the MMI date with "on" the MMI date to reiterate that the impairment rating must correspond to the MMI date. Further, the proposed amendment to subsection (c)(3) adds that an impairment rating is invalid if it is based on the injured employee's condition on a date that is not the MMI date. As discussed in the explanation of amendments to subsection (b)(2), this is necessary to make clear that an impairment rating cannot be adopted unless the impairment rating is based on the employee's condition on the date of MMI. Finally, the proposed amendment to subsection (c)(3) adds that an impairment rating and the corresponding MMI date must be included in the Report of Medical Evaluation to be valid. As discussed in the explanation of amendments to subsection (b)(2), this amendment is necessary to reiterate that a valid impairment rating is one that is assigned to the MMI date and specified in a Report of Medical Evaluation.

Erika Copeland, Director of Designated Doctor Outreach and Oversight, has determined that for each year of the first five years the proposed rule will be in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the proposed amendment. There will be no mea-

surable fiscal effect on local employment or the local economy as a result of the proposed amendment. Because the proposed rule only clarifies existing practice, no changes on the part of governmental entities or stakeholders is required. Consequently, no new costs are anticipated to be incurred.

No increased costs to State Government are associated with the proposed amendment. Ms. Copeland has determined that all duties and responsibilities associated with implementing the proposed amendment can be accomplished by utilizing existing agency resources.

Local Government and State Government as a Covered Entity. Local government and state government as a covered regulated entity will not be impacted by the proposed amendment.

Ms. Copeland has determined that for each year of the first five years the proposed amendment will be in effect the public benefit anticipated as a result of enforcing the proposed amendment will be greater clarity in §130.1. Ms. Copeland has also determined that the proposed amendment will not impose an economic cost to persons who are required to comply with the rule. The proposed amendment reiterates the Division's interpretation of §130.1 and does not require any action on the part of system participants.

As required by the Government Code §2006.002(c), the Division has determined that the proposal will not have an adverse economic effect on the small and micro-businesses that may be required to comply with the rule. The cost of compliance with the proposal will not vary between large businesses and small or micro-businesses, and the Division's cost analysis and resulting estimated costs in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro-businesses. Because the Division has determined that the proposed amendment will have no adverse economic effect on small or micro-businesses, an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Government Code §2006.002, are not required.

The Division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. CST on March 11, 2013. Comments may be submitted via the internet through the Division's internet website at www.tdi.texas.gov/wc/rules/proposedrules/index.html, by email at rulecomments@tdi.texas.gov, or by mail or delivery to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. Comments received after the close of the comment period will not be considered.

Any request for a public hearing must be submitted separately to the Texas Department of Insurance, Division of Workers' Compensation, Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Austin, Texas 78744-1645 by 5:00 p.m. CST by the close of the comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendment is proposed under Labor Code §§401.011, 402.00128, 402.061, 408.025, 408.123, 408.125, and 415.0035. Section 401.011 contains definitions used in the Texas Workers' Compensation Act. Section 402.00128 lists the general powers of the Commissioner, including the power to hold hearings. Section 402.061 requires the Division to adopt rules necessary for the implementation and enforcement of the Texas Workers' Compensation Act. Section 408.025 requires the Division to specify by rule the reports a health care provider is required to file. Section 408.123 requires a doctor certifying MMI to file a written report certifying that maximum medical improvement has been reached, stating the employee's impairment rating, and providing any other information required by the Commissioner. Section 408.125 provides the process for disputing impairment ratings. Section 415.0035 establishes administrative violations for a provider failing to submit required medical reports.

The following statutes are affected by this proposal: Labor Code §§401.011, 402.00128, 402.061, 408.025, 408.123, 408.125, and 415.0035.

§130.1. Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment.

(a) Authorized Doctor.

(1) Only an authorized doctor may certify maximum medical improvement (MMI), determine whether there is permanent impairment, and assign an impairment rating if there is permanent impairment.

(A) Doctors serving in the following roles may be authorized as provided in subsection (a)(1)(B) of this section.

(i) - (ii) (No change.)

(iii) a required medical examination (RME) doctor selected by the insurance carrier and approved by the division [~~commission~~] to evaluate MMI and/or permanent whole body impairment after a designated doctor has performed such an evaluation.

(B) Prior to September 1, 2003 a doctor serving in one of the roles described in subsection (a)(1)(A) of this subsection is authorized to determine whether an injured employee has permanent impairment, assign an impairment rating, and certify MMI. On or after September 1, 2003, a doctor serving in one of the roles described in subsection (a)(1)(A) of this section is authorized as follows:

(i) a doctor whom the division [~~commission~~] has certified to assign impairment ratings or otherwise given specific permission by exception to, is authorized to determine whether an injured employee has permanent impairment, assign an impairment rating, and certify MMI; and

(ii) a doctor whom the division [~~commission~~] has not certified to assign impairment ratings or otherwise given specific permission by exception to is only authorized to determine whether an injured employee has permanent impairment and, in the event that the injured employee has no impairment, certify MMI.

(2) - (3) (No change.)

(b) Certification of Maximum Medical Improvement.

(1) (No change.)

(2) MMI must be certified before an impairment rating is assigned and the impairment rating must be assigned for the injured employee's condition on the date of MMI. An impairment rating is invalid if it is based on the injured employee's condition on a date that is not the MMI date. An impairment rating and the corresponding MMI date must be included in the Report of Medical Evaluation to be valid.

(3) - (4) (No change.)

(c) Assignment of Impairment Rating.

(1) (No change.)

(2) A doctor who certifies that an injured employee has reached MMI shall assign an impairment rating for the current compensable injury using the rating criteria contained in the appropriate edition of the AMA Guides to the Evaluation of Permanent Impairment, published by the American Medical Association (AMA Guides).

(A) (No change.)

(B) The appropriate edition of the AMA Guides to use for certifying examinations conducted on or after October 15, 2001 is:

(i) the fourth edition of the AMA Guides (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the AMA prior to May 16, 2000). If a subsequent printing(s) of the fourth edition of the AMA Guides occurs, and it contains no substantive changes from the previous printing, the division [~~commission~~] by vote at a public meeting may authorize the use of the subsequent printing(s); or

(ii) (No change.)

(C) (No change.)

(3) Assignment of an impairment rating for the current compensable injury shall be based on the injured employee's condition on [~~as of~~] the MMI date considering the medical record and the certifying examination. An impairment rating is invalid if it is based on the injured employee's condition on a date that is not the MMI date. An impairment rating and the corresponding MMI date must be included in the Report of Medical Evaluation to be valid. The doctor assigning the impairment rating shall:

(A) - (F) (No change.)

(4) After September 1, 2003, if range of motion, sensory, and strength testing required by the AMA Guides is not performed by the certifying doctor, the testing shall be performed by a health care practitioner, who within the two years prior to the date the injured employee is evaluated, has had the impairment rating training module required by §180.23 (relating to Division [~~Commission~~] Required Training for Doctors[~~/Certification Levels~~]) for a doctor to be certified to assign impairment ratings. It is the responsibility of the certifying doctor to ensure the requirements of this subsection are complied with.

(5) (No change.)

(d) Reporting.

(1) Certification of MMI, determination of permanent impairment, and assignment of an impairment rating (if permanent impairment exists) for the current compensable injury requires completion, signing, and submission of the Report of Medical Evaluation and a narrative report.

(A) (No change.)

(B) The Report of Medical Evaluation includes an attached narrative report. The narrative report must include the following:

(i) - (vii) (No change.)

(viii) a copy of the authorization if, after September 1, 2003, the doctor received authorization to assign an impairment rating and certify MMI by exception granted from the division [~~commission~~].

(2) A Report of Medical Evaluation under this rule shall be filed with the division [~~commission~~], injured employee, injured employee's representative, and the insurance carrier no later than the seventh working day after the later of:

(A) - (B) (No change.)

(3) The report required to be filed under this section shall be filed as follows:

(A) (No change.)

(B) The Report of Medical Evaluation shall be filed with the division [~~commission~~], the injured employee and the injured employee's representative by facsimile or electronic transmission if the doctor has been provided the recipient's facsimile number or email address; otherwise, the report shall be filed by other verifiable means.

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300289
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 804-4703

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 23. ADMINISTRATIVE PROCEDURES

34 TAC §23.7, §23.8

The Teacher Retirement System of Texas (TRS or system) proposes amendments to 34 TAC §23.7 and §23.8, concerning TRS' Code of Ethics for Contractors (Code of Ethics or Code) and related materials.

Section 23.7 adopts the Code of Ethics by reference and requires compliance with it. Section 825.212(e) of the Government Code requires the Board of Trustees (board) of TRS by rule to adopt standards of conduct applicable to TRS consultants and advisors who likely will be paid over $10,000 in a year or who provide important investment advice. In April 2012, the board adopted a revised Code. Contractors include Agents, Brokers, Consultants, Financial Advisors, and Financial Services Providers, as each term is separately defined by the Code. The proposed amendments to §23.7 would reflect the current version of the Code adopted by the board and filed with the Office of the Secretary of State. The existing §23.7 already explains how to obtain a copy of the Code from TRS. Other minor changes would update or clarify terminology involving the current Code and conform the section with current or proposed wording in the related rule, §23.8, which concerns ancillary reporting materials used in implementing the Code.

Section 23.8 adopts by reference the Expenditure Reporting Memorandum (reporting memorandum) and Expenditure Reporting Form for Contractors (reporting form) and requires Contractors to report expenditures made on behalf of any one TRS trustee or employee of the system. Section 825.212(g) of the Government Code requires the board by rule to require consultants and advisors to the retirement system and brokers to file regularly with the system a report detailing any expenditure of more than $50 made on behalf of a trustee or employee of the system. In September 2010, the board adopted a revised reporting form. In December 2012, the executive director approved under the Code a revised reporting memorandum, which is addressed to Contractors. The proposed amendments to §23.8 would adopt by reference the latest version of the reporting memorandum approved by the executive director and filed with the Office of the Secretary of State. The existing rule already explains how copies of the reporting memorandum and form may be obtained from TRS. TRS proposes amending the title of §23.8 to reflect current terminology used in the Code and §23.7. Other minor changes would clarify references to the revised versions of the reporting memorandum and form and, as applicable, make such references consistent with the wording used in connection with the updated Code adopted by reference in §23.7.

Brian K. Guthrie, TRS Executive Director, estimates that, for each year of the first five years that the proposed amendments to §23.7 and §23.8 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Guthrie has determined that the public benefit will be to provide through the updated rules the latest versions of the Code of Ethics and related materials.

Mr. Guthrie has determined that there is no economic cost to entities or persons required to comply with the proposed rules. The proposed rules do not impose additional reporting or other requirements that would increase the cost of compliance. Mr. Guthrie has determined that there will be no effect on a local economy because of the proposed rule, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie has also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian K. Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments are proposed under the following section of the Government Code: §825.102, which authorizes the board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

Cross-Reference to Statute: §825.212(e) and (g) of the Government Code, concerning the Code of Ethics for Contractors and related reporting requirements.

§23.7. Code of Ethics for Contractors.

The Code of Ethics for Contractors (the Code) sets forth the ethical responsibilities and requirements of Contractors, as that term is defined in the Code, in performing services for [~~Any Consultant, Agent, Financial Advisor, or Financial Services Provider doing business with~~] the Teacher Retirement System of Texas (TRS)[~~, or Broker approved to do business with TRS, must comply with TRS' Code of Ethics for Contractors (the Code of Ethics)~~]. The Board of Trustees of TRS [~~(the board)~~] adopts by reference the Code [~~of Ethics~~] as most recently revised and adopted to be effective April 20, 2012 [~~September 17, 2010~~]. [~~Capitalized words appearing in this section have the same meaning assigned to them in the Code of Ethics.~~] A copy of the most recently revised Code [~~of Ethics~~] has been filed with the Office of the Secretary of State in Austin. Copies of the Code [~~of Ethics~~] are available from TRS at 1000 Red River Street, Austin, Texas 78701-2698, (512) 542-6400. Also, a copy of the Code [~~of Ethics~~] can be found on and printed from the TRS website, www.trs.state.tx.us, in the information regarding TRS Ethics.

§23.8. Expenditure Reporting by Certain Contractors [~~Consultants, Agents, Financial Advisors, Financial Services Providers, and Brokers~~].

Under §23.7 of this title (relating to Code of Ethics for Contractors) and the Code of Ethics for Contractors (the Code) adopted by the Board of Trustees of the Teacher Retirement System of Texas (TRS), each Contractor, as that term is defined in the Code, must annually file an expenditure report on the prescribed TRS form. The Contractor must include in the report itemized, reasonably detailed lists of expenditures of more than $50 per day made by or on behalf of the Contractor with respect to or for the benefit of each TRS Trustee or Employee. Each Contractor must comply with TRS rules governing the filing of and requirements for the expenditure reporting form promulgated by TRS, including [~~Consultants, Agents, Financial Advisors, and Financial Services Providers doing business with the Teacher Retirement System of Texas (TRS), and Brokers approved to do business with TRS, must report expenditures made of more than $50 on behalf of any one trustee or employee of TRS and must file any other report required by the Code of Ethics for Contractors (Code of Ethics), which is adopted by reference in §23.7 of this title (relating to Code of Ethics for Contractors). The reports must be filed no later than April 15 of each year with the Executive Director and must comply with~~] the Code, [~~of Ethics and the~~] Expenditure Reporting Memorandum (reporting memorandum), and [~~the~~] Expenditure Reporting Form for Contractors (reporting form) as promulgated and applicable under the Code [~~of Ethics for Contractors~~] and revised from time to time. TRS adopts by reference the reporting memorandum as most recently revised December 15, 2012 [~~November 2, 2010~~] and the reporting form as most recently revised September 17, 2010. Capitalized words appearing in this section have the same meaning assigned to them in the Code [~~of Ethics~~], as revised from time to time. Copies of the most recently revised reporting memorandum and reporting form have been filed with the Office of the Secretary of State in Austin. Copies of the reporting memorandum and the reporting form are available from TRS at 1000 Red River Street, Austin, Texas 78701-2698, (512) 542-6400. Also, copies of the reporting memorandum and the reporting form can be found on and printed from the TRS website, www.trs.state.tx.us, in the information regarding TRS Ethics.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2013.

TRD-201300225

Brian K. Guthrie
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 542-6438

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.13

The Texas Department of Public Safety (the department) proposes amendments to §4.13, concerning Authority to Enforce, Training and Certificate Requirements. The proposed amendment is necessary to ensure this section is consistent with Texas Transportation Code, §644.101, which establishes which peace officers are eligible to enforce Chapter 644.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule is maximum efficiency of the Motor Carrier Safety Assistance Program.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with this rule as proposed. There is no anticipated negative impact on local employment.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

The Texas Department of Public Safety, in accordance with the Administrative Procedure Act, Texas Government Code, §2001.001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on Monday, February 18, 2013, at 10:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to 37 TAC §4.13 regarding Authority to Enforce, Training and Certificate Requirements, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 and §644.101 are affected by this proposal.

§4.13. Authority to Enforce, Training and Certificate Requirements.

(a) Authority to Enforce.

(1) An officer of the department may stop, enter or detain on a highway or at a port of entry a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

(2) A non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may stop, enter or detain at a commercial motor vehicle inspection site, or at a port of entry, a motor vehicle that is subject to Texas Transportation Code, Chapter 644.

(3) An officer of the department or a non-commissioned employee of the department that is trained and certified to enforce the federal safety regulations may prohibit the further operation of a vehicle on a highway or at a port of entry if the vehicle or operator of the vehicle is in violation of Texas Transportation Code, Chapter 522, or a federal safety regulation or rule adopted under Texas Transportation Code, Chapter 644, by declaring the vehicle or operator out-of-service using the North American Standard Out-of-Service Criteria as a guideline.

(4) Municipal police officers from any of the following Texas cities meeting the training and certification requirements contained in subsection (b) of this section and certified by the department may stop, enter or detain on a highway or at a port of entry within the

municipality a motor vehicle subject to Texas Transportation Code, Chapter 644:

(A) a municipality with a population of 50,000 or more;

(B) a municipality with a population of 25,000 or more, any part of which is located in a county with a population of 500,000 or more;

(C) a municipality any part of which is located in a county bordering the United Mexican States;

(D) a municipality with a population of less than 25,000, any part of which is located in a county with a population of 2.4 million and that contains or is adjacent to an international port;

(E) a municipality with a population of less than 5,000 that is located adjacent to a bay connected to the Gulf of Mexico and in a county adjacent to a county with a population greater than 3.3 million;

(F) a municipality with a population of 60,000 or more any part of which is located in a county with a population of 750,000 or more and in two or more counties with a combined population of one million or more; or

(G) a municipality with a population of at least 34,000 that is located in a county that borders two or more states.

(5) A sheriff, or deputy sheriff from any of the following Texas counties meeting the training and certification requirements contained in subsection (b) of this section and certified by the department, may stop, enter or detain on a highway or at a port of entry within the county a motor vehicle subject to Texas Transportation Code, Chapter 644:

(A) a county bordering the United Mexican States;[,] or

(B) a county with a population of 2.2 million or more.

[~~(6) A constable, or deputy constable, designated under Texas Transportation Code, §621.4015, meeting the training and certification requirements contained in subsection (b) of this section and certified by the department, may stop, enter or detain on a highway within the county a motor vehicle subject to Texas Transportation Code, Chapter 644.~~]

(6) [~~(7)~~] A certified peace officer from an authorized municipality or county may prohibit the further operation of a vehicle on a highway or at a port of entry within the municipality or county if the vehicle or operator of the vehicle is in violation of Texas Transportation Code, Chapter 522, or a federal safety regulation or rule adopted under Texas Transportation Code, Chapter 644, by declaring the vehicle or operator out-of-service using the North American Standard Out-of-Service Criteria as a guideline.

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 28, 2013.

TRD-201300291
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 424-5848

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PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 349. GENERAL ADMINISTRATIVE STANDARDS

SUBCHAPTER D. COMPLAINTS AGAINST JUVENILE BOARDS

37 TAC §349.410

The Texas Juvenile Justice Department (TJJD) proposes to amend §349.410, concerning Administrative Review and Appeal of Investigation Findings.

The amended section will make several changes to the process by which TJJD conducts administrative reviews of investigation findings in cases of alleged abuse, neglect, or exploitation occurring in county-level facilities. TJJD will no longer provide an in-person hearing in every case where an administrative review is requested. Additionally, the deadline for the designated perpetrator or administrative designee named in the investigation report to submit a request for an administrative review will be reduced from 45 days to 20 days.

The amended section will also change the process for appealing the results of the administrative review. For persons named as designated perpetrators, there will no longer be a provision allowing for separate hearings at the State Office of Administrative Hearings (SOAH) to rule on (1) the results of the administrative review, and (2) any discipline taken against the person's certification as a juvenile supervision officer or juvenile probation officer. Results of the administrative review may only be appealed to SOAH in connection with a subsequent hearing on the discipline.

Bill Monroe, Senior Director of Finance and Technology, has determined that for the first five-year period the section is in effect, there will be no fiscal impact for state or local government as a result of enforcing or administering the section.

Brett Bray, General Counsel, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be to increase the efficiency and timeliness of certified officer disciplinary actions.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

Comments on the proposal may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711 or email policy.proposals@tjjd.texas.gov.

The amended section is proposed under Human Resources Code §222.053, which empowers TJJD to enforce minimum standards for juvenile probation and detention staff through disciplinary actions on required certifications, and Family Code §261.405, which requires TJJD to conduct investigations of alleged abuse, neglect, or exploitation in any juvenile justice program or facility.

No other statute, code, or article is affected by this proposal.

§349.410. Administrative Review and Appeal of Investigation Findings.

(a) Any person named by the Texas Juvenile Justice Department (TJJD) as a [~~to whom the Commission assigns the role of~~] designated perpetrator or administrative designee as a result of an investigation conducted under Chapter 350 of this title may request an administrative review of the investigation findings [~~the Commission's disposition of such role~~].

(b) The designated perpetrator or administrative designee shall request the review in writing within 20 [~~45~~] calendar days after receiving TJJD's [~~the Commission's~~] written notice of the investigation findings [~~disposition~~].

(c) If civil or criminal proceedings related to an allegation that TJJD [~~the Commission~~] has investigated are pending when a designated perpetrator or administrative designee requests an administrative review, or if such proceedings are initiated before TJJD [~~the Commission~~] begins the review, TJJD [~~the Commission~~] may postpone the review until the proceedings are completed.

(d) The designated perpetrator or administrative designee has a right to:

[~~(1) appear in person at the review;~~]

(1) [~~(2)~~] represent himself/herself or be represented by an authorized representative; and

(2) [~~(3)~~] submit relevant evidence on his/her behalf.

(e) If TJJD chooses to interview a [~~If the~~] designated perpetrator or administrative designee who does not speak English or is hearing impaired, TJJD [~~the Commission~~] shall provide a certified translator or interpreter unless the designated perpetrator or administrative designee chooses to provide his/her own certified translator or interpreter.

[~~(f)~~] If the designated perpetrator or administrative designee chooses to provide his/her own certified translator or interpreter, he/she will be responsible for all costs incurred in connection with the review.

(f) [~~(g)~~] The administrative review shall be conducted by a staff member appointed by the TJJD general counsel [~~Commission hearing examiner~~]. The staff member [~~hearing examiner~~] shall confirm or revise TJJD's [~~the Commission's~~] original notice of the investigation findings [~~disposition~~] based on the same policies applied by TJJD [~~the Commission~~] during the original investigation. Within 45 [~~30~~] calendar days after receiving the request for [~~completing the~~] review, TJJD [~~the hearing examiner~~] shall notify the designated perpetrator or administrative designee of the outcome of the review.

(g) An administrative designee may appeal the findings of the administrative review to the State Office of Administrative Hearings (SOAH). To file such an appeal, the administrative designee must submit a written request to TJJD within 20 calendar days after the date TJJD mailed the findings of the administrative review to the administrative designee. A designated perpetrator may appeal the findings of the administrative review to SOAH only in conjunction with discipline issued by TJJD.

[~~(h) The hearing examiner's notification must inform the designated perpetrator or administrative designee that if he/she is dissatisfied with the hearing examiner's decision, he/she must notify the Commission in writing within 20 days after receiving notice of the decision in order to request that the decision be appealed to SOAH.~~]

(h) [~~(i)~~] If the administrative review or SOAH hearing results in changes to the [~~hearing examiner or SOAH revises the Commission's~~] original findings, TJJD staff [~~or advises the Commission to take any other action(s) in the case, the Commission~~] must:

(1) enter the revised findings into the investigation record; and

(2) notify each person who was notified of the original findings that the findings have been revised.[~~; and~~]

[~~(3) take any other action specified by the reviewer.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300243
Brett Bray
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: March 10, 2013
For further information, please call: (512) 424-6278

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Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 22. EXAMINING BOARDS

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 347. REGISTRATION OF PHYSICAL THERAPY FACILITIES

22 TAC §347.9

The Texas Board of Physical Therapy Examiners adopts amendments to §347.9, regarding Renewal of Registration, without changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8432). The amendments clarify the renewal requirements and late fee information for facility registration.

The amendments move language within the section, move information about renewal late fees from §347.12 to this section, and delete confusing language regarding a registration status (delayed status) that no longer is used. The logic of renewal or restoration of facility registrations will match that of renewal or restoration of individual licenses.

No comments were received regarding the proposed changes.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2013.

TRD-201300235
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: February 12, 2013
Proposal publication date: October 26, 2012
For further information, please call: (512) 305-6900

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22 TAC §347.12

The Texas Board of Physical Therapy Examiners adopts amendments to §347.12, regarding Restoration of Registration, without changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8433). The amendments change the basis for assessment of restoration fees and clarify rules regarding restoration and renewal of facility registrations.

The amendments move information about late fees to §347.9, regarding Renewal of Registration, set up two restoration fees based on notification of facility closure or the lack thereof, and establish clearer information about restoration fees. The logic of renewal or restoration of facility registrations will match that of renewal or restoration of individual licenses.

No comments were received regarding the proposed changes.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2013.

TRD-201300236
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: February 12, 2013
Proposal publication date: October 26, 2012
For further information, please call: (512) 305-6900

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22 TAC §347.13

The Texas Board of Physical Therapy Examiners adopts new §347.13, regarding Cancellation of Registration, without changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8434). The rule describes the requirements to cancel a facility restoration.

The new rule moves information about cancellation of a facility registration from §347.12, regarding Restoration of Registration, to a new section.

No comments were received regarding the proposed changes.

The new rule is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2013.

TRD-201300234
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: February 12, 2013
Proposal publication date: October 26, 2012
For further information, please call: (512) 305-6900

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PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §361.1

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §361.1 (Board Rule §361.1) without changes to the proposed text as published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9430).

The Board adopts amendments to Board Rule §361.1 which sets forth the definitions of certain terms and words used in Title 8, Chapter 1301 of the Texas Occupations Code (Plumbing License Law) and Board Rules.

The adopted change to Board Rule §361.1(19) clarifies the language of the rule by stating that registrants with endorsements are also subject to continuing professional education requirements.

The adopted change to Board Rule §361.1(23) adds Plumbing Inspectors to the category of licensees qualified to hold an endorsement.

The adopted change to Board Rule §361.1(30) adds Plumbing Inspectors in the category of licensees entitled to hold a medical gas piping endorsement.

The adopted new Board Rule §361.1(31) adds Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement to the endorsements issued by the Board. The remaining paragraphs have been renumbered accordingly.

The adopted change to Board Rule §361.1(37) adds multipurpose residential fire protection sprinklers in the definition of plumbing. This paragraph has been renumbered Board Rule §361.1(38).

The adopted change to Board Rule §361.1(39) expands the definition of plumbing inspection to include multipurpose residential fire protection sprinkler systems. This paragraph has been renumbered Board Rule §361.1(40).

No comments were received regarding the proposed amendments after publication in the *Texas Register.*

The amendments to Board Rule §361.1 are adopted under and affect Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300270
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Effective date: February 14, 2013
Proposal publication date: November 30, 2012
For further information, please call: (512) 936-5224

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22 TAC §361.12

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §361.12 (Board Rule §361.12) without changes to the proposed text as published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9434).

The Board adopts amendments to Board Rule §361.12 which concerns the Board's advisory committees.

The adopted amendment makes a citation to the current section of Chapter 1301 of the Texas Occupations Code (Plumbing License Law).

No comments were received regarding the proposed amendments after publication in the *Texas Register.*

The amendments to Board Rule §361.12 are adopted under and affect Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300271
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Effective date: February 14, 2013
Proposal publication date: November 30, 2012
For further information, please call: (512) 936-5224

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CHAPTER 363. EXAMINATION AND REGISTRATION

22 TAC §363.11

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §363.11 (Board Rule §363.11) without changes to the proposed text as published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9435).

The Board adopts amendments to Board Rule §363.11 which sets forth the Endorsement Training Programs.

The adopted changes to Board Rule §363.11 allows a Plumbing Inspector to take the Medical Gas Piping Installation endorsement examination after completing a training program approved by the Board that pertains to subject matter applicable to the installation of medical gas piping systems. The amendment also cites the latest edition of the National Fire Protection Association code for gas and vacuum systems.

No comments were received regarding the proposed amendments after publication in the *Texas Register.*

The amendments to Board Rule §363.11 are adopted under and affect Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2013.

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Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Effective date: February 14, 2013
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For further information, please call: (512) 936-5224

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22 TAC §363.13

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §363.13 (Board Rule §363.13) without changes to the proposed text as published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9437).

The Board adopts amendments to Board Rule §363.13 which sets forth the Training Program for Responsible Master Plumber Applicants.

The adopted changes to Board Rule §363.13 would require a limit of 45 students to the Responsible Master Plumber Training Course.

Comments were received regarding the proposed amendments after publication in the *Texas Register.* Comments received were opposed to the amendments.

The amendments to Board Rule §363.13 are adopted under and affect Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2013.

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Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
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For further information, please call: (512) 936-5224

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CHAPTER 365. LICENSING AND REGISTRATION

22 TAC §365.5

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §365.5 (Board Rule §365.5) without changes to the proposed text as published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9438).

The Board adopts amendments to Board Rule §365.5, concerning Renewals, so that it correctly cites the title of the latest edition of the National Fire Protection Association's code on gas and vacuum systems.

No comments were received regarding the proposed amendments after publication in the *Texas Register.*

The amendments to Board Rule §365.5 are adopted under and affect Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2013.

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Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Effective date: February 14, 2013
Proposal publication date: November 30, 2012
For further information, please call: (512) 936-5224

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22 TAC §365.8

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §365.8 (Board Rule §365.8) without changes to the proposed text as published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9439).

The Board adopts amendments to Board Rule §365.8, concerning Change of Name, Address, or Employment, that establish the requirement that licensees or registrants inform the Board of changes to their name or mailing address.

The amendments require licensees and registrants to inform the Board of changes in primary employment annually, upon renewal of a license or registration. In addition to this change, the amendment gives licensees and registrants a period of thirty days to notify the Board of changes to their legal name and mailing address. These changes ensure that the Board maintains the most recent contact information for its licensees and registrants.

No comments were received regarding the proposed amendments after publication in the *Texas Register.*

The amendments to Board Rule §365.8 are adopted under and affect Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2013.

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Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
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Proposal publication date: November 30, 2012
For further information, please call: (512) 936-5224

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22 TAC §365.13

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §365.13 (Board Rule §365.13) without changes to the proposed text as published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9440).

The Board adopts amendments to Board Rule §365.13 that pertain to the licensing of guaranteed student loan defaulters.

The amendments address cases in which a licensee or registrant is in default of child support payments. The amendments are based on a requirement from the Office of the Attorney General of Texas, as described in Texas Family Code, Chapter 232, that the Board shall not renew a professional license or registration if notified by the Office of the Attorney General of Texas that the licensee or registrant is delinquent in his or her child support payments. Further, the Board shall suspend a license or registration if ordered to do so by the Office of the Attorney General of Texas.

No comments were received regarding the proposed amendments after publication in the *Texas Register.*

The amendments to Board Rule §365.13 are adopted under and affect Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2013.

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Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Effective date: February 14, 2013
Proposal publication date: November 30, 2012
For further information, please call: (512) 936-5224

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22 TAC §365.14

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §365.14 (Board Rule §365.14) without changes to the proposed text as published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9441).

The Board adopts amendments to Board Rule §365.14 which pertains to continuing professional education programs.

The amendment to Board Rule §365.14(a)(7) eliminates the requirement that course providers include sample forms for doing business with licensees, registrants, and the public in their course materials. This amendment is intended to conserve the use of paper when materials are available online or by mail through the Board. The amendment to Board Rule §365.14(c)(7) gives course providers the option of printing information required by Board Rule §365.14(c)(4) - (6) in a course book rather than on a separate sheet of paper.

No comments were received regarding the proposed amendments after publication in the *Texas Register.*

The amendments to Board Rule §365.14 are adopted under and affect Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300277
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Effective date: February 14, 2013
Proposal publication date: November 30, 2012
For further information, please call: (512) 936-5224

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CHAPTER 367. ENFORCEMENT

22 TAC §367.1

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §367.1 (Board Rule §367.1) without changes to the proposed text as published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9445).

The Board amends Board Rule §367.1, concerning General Provisions, to adopt the latest edition of the International Plumbing Code.

No comments were received regarding the proposed amendments after publication in the *Texas Register.*

The amendments to Board Rule §367.1 are adopted under and affect Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300278
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Effective date: February 14, 2013
Proposal publication date: November 30, 2012
For further information, please call: (512) 936-5224

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22 TAC §367.4

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §367.4 (Board Rule §367.4) without changes to the proposed text as published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9447).

The Board adopts amendments to Board Rule §367.4 that pertains to the display of a license and the company name.

The amendments require that Responsible Master Plumbers display their licenses in a conspicuous location to put the public on notice that they are licensed by the Board. The amendments also require registrants to carry their Plumber's Apprentice Registration with them while engaged in plumbing work. Both requirements help the public and the Board's investigators to quickly identify individuals who are not licensed or registered by the Board to perform plumbing.

No comments were received regarding the proposed amendments after publication in the *Texas Register.*

The amendments to Board Rule §367.4 are adopted under and affect Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300279
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Effective date: February 14, 2013
Proposal publication date: November 30, 2012
For further information, please call: (512) 936-5224

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22 TAC §367.10

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §367.10 (Board Rule §367.10) without changes to the proposed text as published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9447).

The Board adopts amendments to Board Rule §367.10 which concern administrative penalties issued by the Board.

The existing rule incorrectly cites a statute in Chapter 1301 of the Texas Occupations Code (Plumbing License Law). The amendments correct the cite to the proper statute in the Plumbing License Law.

No comments were received regarding the proposed amendments after publication in the *Texas Register.*

The amendments to Board Rule §367.10 are adopted under and affect Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 require the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300280

Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Effective date: February 14, 2013
Proposal publication date: November 30, 2012
For further information, please call: (512) 936-5224

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PART 28. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 651. FEES

22 TAC §§651.1 - 651.3

The Executive Council of Physical Therapy and Occupational Therapy Examiners adopts amendments to §§651.1 - 651.3, concerning Fees, without changes to the proposed text as published in the October 12, 2012, issue of *Texas Register* (37 TexReg 8158). The rules will not be republished.

The sections are amended to clarify the fee facility owners must pay when restoring a facility registration that has been expired for more than one year, and they wish to restore occupational and/or physical therapy services. Also, a duplicate renewal card may no longer be ordered. It is freely available on the board's website, resulting in the deletion of this administrative fee.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Title 3, Subtitle H, Chapter 452 of the Texas Occupations Code, which provides the Executive Council of Physical Therapy and Occupational Therapy Examiners with the authority to adopt rules consistent with this chapter to carry out its duties in administering this chapter.

Title 3, Subtitle H, Chapter 452 and Chapter 454 of the Texas Occupations Code is affected by the amended sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300268
John Maline
Executive Director
Executive Council of Physical Therapy and Occupational Therapy Examiners
Effective date: February 14, 2013
Proposal publication date: October 12, 2012
For further information, please call: (512) 305-6900

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PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES

SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

22 TAC §§851.25, 851.30, 851.45

The Texas Board of Professional Geoscientists (Board) adopts amendments to 22 TAC §§851.25, 851.30, and §851.45, concerning the licensure and regulation of Professional Geoscientists (P.G.s). Section 851.25 and §851.30 are adopted without changes to the proposed text as published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7855) and will not be republished. Section 851.45 is adopted with changes and will be republished.

The adopted amendment to §851.25 provides that a commercial evaluation of a degree shall be accepted in lieu of an official transcript only if the credential evaluation service has indicated that the credential evaluation was based on a verified official academic record or transcript.

Amendments to §851.30 are adopted regarding firms that offer or perform geoscience services on a part-time basis, and they eliminate the requirement that a P.G. in responsible charge must have a physical presence at the relevant firm location and be a regular full-time employee of the firm. The amendment also clarifies that a firm's registration cannot be renewed once the registration has been expired for one year. A firm must re-apply to become registered again.

Amendments to §851.45 are adopted to clarify the requirements regarding the P.G. application process for an individual who is certified as a Geoscientist-in-Training.

The public benefit anticipated as a result of enforcing or administering the sections is that the Texas Board of Professional Geoscientists' application rules are clarified, firm registration guidelines are clarified, and the Board will be able to more effectively regulate the public practice of geoscience in Texas, which will protect and promote public health, safety, and welfare.

No comments from the public were received regarding these amendments.

The adopted amendments are authorized by the Texas Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); by Occupations Code §1002.154 which provides that the Board shall enforce the Act; by Occupations Code §1002.255 which provides for license eligibility requirements regarding education and work experience; and by Occupations Code §1002.351 which provides that the Board may adopt rules relating to the public practice of geoscience by a firm or corporation.

The adopted amendments affect Occupations Code, Chapter 1002.

§851.45. Relationship of Geoscientist-in-Training Certification to Licensure of Professional Geoscientists.

The Geoscientist-in-Training (GIT) Certification is intended as a stepping stone toward licensure as individuals are gaining acceptable geoscience experience. Upon accruing 5 years of post graduate geoscience work experience, individuals who are GIT certified and in good standing with the Board will need to:

(1) submit TBPG's P.G. License Application;

(2) submit the application fee as detailed in §851.80 of this chapter;

(3) supply letters of reference as detailed in §851.24 of this chapter;

(4) provide evidence of experience as described in §851.23 of this chapter; and

(5) successfully pass the appropriate practice exam of ASBOG or CSSE. The degree program, coursework and transcripts are evaluated during the application phase for GIT Certification, and shall not be re-evaluated upon application for licensure as a Professional Geoscientist.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2013.

TRD-201300231
Charles Horton
Executive Director
Texas Board of Professional Geoscientists
Effective date: February 15, 2013
Proposal publication date: October 5, 2012
For further information, please call: (512) 936-4400

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 39. PRIMARY HEALTH CARE SERVICES PROGRAM

SUBCHAPTER A. PRIMARY HEALTH CARE SERVICES PROGRAM

25 TAC §§39.1, 39.2, 39.4 - 39.6, 39.8 - 39.11

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§39.1, 39.2, 39.4 - 39.6, and 39.8 - 39.11, concerning the provision of primary health care services in Texas. Section 39.2 is adopted with changes to the proposed text as published in the August 3, 2012, issue of the *Texas Register* (37 TexReg 5713). Sections 39.1, 39.4 - 39.6, and 39.8 - 39.11 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments are necessary to comply with Health and Safety Code, Chapter 31, which authorizes the department to establish a program to provide primary health care services to eligible individuals. The Primary Health Care Services Program provides access to basic health care services for individuals with incomes at or below 150% of the Federal Poverty Level residing in Texas who are unable to access the same care through other funding sources or programs.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 39.1, 39.2, 39.4 - 39.6, and 39.8 - 39.11 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

Amendments to §39.1(a) change references to the word "section" and re-word as "subchapter." Amendments add language to specify that the rules in this subchapter only apply to Subchapter A.

Amendments to §39.1(b) remove language that projects will utilize and integrate a plurality of existing primary health care services and providers into a structured service delivery system.

An amendment to §39.2(14)(B) clarifies residency and deletes the requirement to maintain an abode.

Amendments to §39.4(a) clarify that eligible individuals should receive services close to their home, unless otherwise necessary.

Amendments to §39.5(c) delete references to 90-day timeframe for receiving payments on behalf of individual clients since this is no longer applicable.

An amendment to §39.6(d)(2) deletes the requirement for providers to screen for Medicare, Part D, prescription drug benefits.

Section 39.8(c) is no longer applicable to the program; therefore, the subsection has been deleted and subsequent subsections renumbered within the section.

Section 39.9(3) is deleted because it is no longer applicable. Reformatting within the section accompanied the deletion.

An amendment to §39.10(c) clarifies that the department will notify the recipient in writing if program benefits will be denied, modified, suspended or terminated.

An amendment to §39.11(c)(2) revises the language regarding reporting the number of eligible individuals receiving services and the average cost per recipient, and §39.11(c)(5) is no longer necessary for the program.

COMMENTS

Comment: The department, on behalf of the commission, received a comment from the Texas Register Division of the Office of the Secretary of State concerning §39.2 regarding compliance with *Texas Register* structuring and format requirements to include an opening statement for the section: "The following words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise."

Response: The commission agreed with the comment and the recommended language was added to the rule.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments are authorized under the Health and Safety Code, §31.004, which requires the department to adopt rules necessary to administer the Primary Health Care Services Program; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

§39.2. Definitions.

The following words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Texas Primary Health Care Services Act, Health and Safety Code, Chapter 31.

(2) Applicant--An individual and/or family applying to receive primary health care services.

(3) Commission--The Texas Health and Human Services Commission.

(4) Commissioner--The Commissioner of Health.

(5) Department--The Department of State Health Services.

(6) Eligible individual--An eligible recipient of primary health care services under the Act.

(7) Other benefit--A benefit, other than a benefit provided under the Act, to which an individual is entitled for payment of the costs of primary health care services, including:

(A) benefits available from:

(i) an insurance policy, group health plan, or prepaid medical care plan;

(ii) Title XVIII or Title XIX of the Social Security Act;

(iii) the Veterans Administration;

(iv) the Civilian Health and Medical Program of the Uniformed Services; and

(v) workers compensation or any other compulsory employer's insurance program;

(B) a public program created by federal or state law, or by an ordinance or rule of a municipality or political subdivision of the state, except those benefits created by the establishment of a city or county hospital, a joint city-county hospital, a county hospital authority, a hospital district, or by the facilities of a publicly supported medical school; or

(C) benefits resulting from a cause of action for medical, facility, or medical transportation expenses, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided by the Act.

(8) Primary health care services--which include the following:

(A) diagnosis and treatment;

(B) emergency services;

(C) family planning services;

(D) preventive health services, including immunizations;

(E) health education;

(F) laboratory, x-ray, nuclear medicine, or other appropriate diagnostic services;

(G) nutrition services;

(H) health screening;

(I) home health care;

(J) dental care;

(K) transportation;

(L) prescription drugs and devices and durable supplies;

(M) environmental health services;

(N) podiatry services; and

(O) social services.

(9) Program--The primary health care services program created by the Act.

(10) Provider--An entity that, through a grant or a contract with the department, delivers primary health care services that are purchased by the department for the purposes of the Act.

(11) Recipient--An individual receiving primary health care services under the Act.

(12) Request for proposal--A solicitation providing guidance and instructions issued by the department to entities interested in submitting applications to provide primary health care services under the Act.

(13) Services--Primary health care services.

(14) Texas resident--An individual who is physically present within the geographic boundaries of the state, and who:

(A) intends to remain within the state, whether permanently or for an indefinite period;

(B) does not claim residency in any other state or country;

(C) is under 18 years of age, and at least one of his/her parents, managing conservator, or guardian is a bona fide resident of Texas;

(D) is a person residing in Texas and his/her legally dependent spouse is a bona fide resident of Texas; or

(E) is an adult residing in Texas whose legal guardian is a bona fide resident of Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300257
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: February 14, 2013
Proposal publication date: August 3, 2012
For further information, please call: (512) 776-6972

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CHAPTER 412. LOCAL MENTAL HEALTH AUTHORITY RESPONSIBILITIES

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §§412.401 - 412.417 and new §§412.401 - 412.416, concerning mental health case management services. New §§412.401 - 412.403, 412.407, and 412.414 are adopted with changes to the proposed text as published in the August 3, 2012, issue of the *Texas Register* (37 TexReg 5715). The repeal of §§412.401 - 412.417 and new §§412.404 - 412.406, 412.408 - 412.413, 412.415, and 412.416 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The repeals and new sections stipulate the requirements for providing mental health case management services. In addition, the proposed subchapter addresses the requirement in Health and Safety Code, §533.0354, that the provision of mental health services for adults with bipolar disorder, schizophrenia, or clinically severe depression and for children with serious emotional illnesses be accomplished using disease management practices.

The requirements for providing mental health case management services described in the proposed subchapter are based on the department's mental health service delivery system and the Medicaid State Plan. This model promotes the uniform provision of services that are based on clinical evidence and recognized best practices. In addition, the model promotes effective mental health case management services by utilizing individual-specific information that identifies an individual's mental health care needs, matches those needs to a particular type(s) of case management service, and evaluates the effectiveness of the service provided.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 412.401 - 412.417 have been reviewed and the department has determined that reasons continue to exist for readopting some of the sections because rules on this subject are needed as more particularly described in the section-by-section summary.

SECTION-BY-SECTION SUMMARY

Section 412.401 describes the subchapter's purpose by setting out the requirements for providing mental health case management services.

Section 412.402 sets forth the subchapter's application to providers of mental health case management services.

Section 412.403 revises and adds definitions that are used in the subchapter. Definitions that are readopted are the terms "adolescent," "adult," "business day," "child," "individual," and "utilization management guidelines." Revised or new definitions of terms that are included in the text are "assessment or reassessment," "case manager," "CFR," "community based," "community mental health center or CMHC," "community resources," "community services specialist or CSSP," "crisis," "department," "designee," "dual relationship," "employee," "individual," "institution for mental diseases or IMD," "intensive case management," "intensive case management plan or plan," "legally authorized representative or LAR," "level of care or LOC," "life domains," "medically necessary," "mental health (MH) case management services," monitoring and follow-up," "primary caregiver," "provider," "qualified mental health professional-community services or QMHP-CS," "recovery," "recovery planning," "recovery plan or treatment plan," "referral and linkage," "routine case management," "site based," "staff member," "strengths based," "TAC," "uniform assessment," and "wraparound process planning or other department-approved model." Definitions for the terms "family partner" and "MH case management plan" are not used in the text and have been deleted.

Section 412.404 revises the requirements for providers of mental health case management services and reorganizing the section promotes readability.

Section 412.405 revises the eligibility requirements for receiving mental health case management services. Clarifying language about diagnoses has been added and the term "mental retardation" has been replaced with the new term "intellectual or developmental disability."

Section 412.406 revises the process for authorizing mental health case management services. The section title was revised to more accurately reflect the section's content. Minor revisions were made within the section to promote clarity and the subsections were reordered. New subsection (a)(1) incorporates language to clarify that a uniform assessment will be conducted at intervals specified by the department. Paragraph (3) was added to the subsection clarifying that a licensed practitioner of the healing arts must verify and document that the mental health services recommended by the individual's level of care are medically necessary.

Section 412.407 revises the standards for providing routine and intensive case management services. The new section categorizes the standards for all mental health case management services and separates those that are unique to routine case management services and intensive case management services. Federal requirements governing the department's Medicaid State Plan were revised. Therefore, it was necessary to submit a state plan amendment to incorporate the new federal requirements for providing case management services. The state plan amendments included the addition of a documented timeline for obtaining needed services, a timeline for reevaluating the plan, and documentation of coordination with other case managers. Additionally, because routine case management does not require a formalized plan, the medical record of individuals receiving routine case management must include the following: a comprehensive documentation note that identifies the problems to be addressed, a timeline for addressing the problems, and a timeline for reevaluating the need for services and outcomes. Following federal review of the state plan amendment and subsequent feedback, the following additional changes were made. An individual's needs for medical, educational, social, or other services must be clinically assessed and determined clinically necessary. Concerning monitoring and follow-up activities, other people in addition to those already listed in the standard may be contacted to provide information about the individual. The LAR, with or without the child or adolescent being present, may provide a case management service that assists a child or adolescent in gaining and coordinating access to necessary care and services. For intensive case management for children and adolescents, subsection (d) concerning wraparound process planning was

revised to accurately reflect evidence-based practice, which indicates wraparound process planning is most effective when provided to those with the highest intensity needs.

Section 412.408 revises the requirement that the provider must, in accordance with department rules in §§404.151 - 404.169 concerning rights of individuals receiving mental health services, notify the individual and legally authorized representative in writing about the provider's process for submitting a complaint about mental health case management services.

Section 412.409 outlines the limitations to providing mental health case managements services; such as an existing dual relationship or a conflict of interest.

Section 412.410 revises the criteria for when a provider is to notify the department or its designee such as when an individual no longer meets eligibility criteria, has refused services, or cannot be located. The section also addresses when to terminate services such as when an individual no longer meets eligibility criteria. The requirement to document the reason for terminating services was added.

Section 412.411 revises the required qualifications for mental health case managers and case manager supervisors.

Section 412.412 stipulates the requirements that providers must meet to ensure that their employees who are case managers or case manager supervisors are qualified and competent to provide and supervise mental health case management services, respectively.

Section 412.413 provides the requirements for documenting the provision of mental health case management services.

Section 412.414 revises the current requirements that providers must meet in order to obtain Medicaid reimbursement for mental health case management services to provide clarity, adds a new requirement that a provider's claim for these services must be made in accordance with the department's Mental Health Case Management Guidelines, and adds a provision allowing the provider to bill for providing a face-to-face case management service to an LAR on behalf of a Medicaid-eligible child or adolescent.

Section 412.415 states the current provisions relating to the rights of Medicaid-eligible individuals to request a fair hearing and an appeal of a decision regarding their eligibility for mental health case management services and adds new text to clarify these rights.

Section 412.416 revises the list of guidelines that are referenced in this subchapter, replaces some current guidelines with new guidelines, and adds Internet web addresses to access the guidelines electronically.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenter was the Texas Council of Community Mental Health and Mental Retardation Centers, Austin. The commenter was in favor of the rules and was not against the rules in their entirety; however, the commenter suggested recommendations for change as discussed in the summary of comments.

Comment: Concerning §412.403(8), the commenter requested that the definition of the term "community based" be revised to include routine or intensive case management services.

Response: The department responds by making the suggested revision. The department clarifies that routine case management services are most often provided in the offices of the LMHA and intensive case management services are most often provided in the community such as at an individual's home or school.

Comment: In §412.405, the commenter asked that the term "intellectual or developmental disability" be replaced by the term "pervasive intellectual or developmental disability."

Response: The department declines to make the revision because the person first language adopted by the 82nd Texas Legislature authorized use of the term "intellectual disability" or "developmental disability" to replace the terms "mental retardation" and "developmental disorder." No change was made as a result of the comment.

Comment: In §412.410(a)(4), the commenter requested that the timeframe required for locating an individual be reduced from two consecutive months to 30 days to allow for consistency with the TRAG and to allow the LMHAs to move individuals off the waiting list in a more timely manner.

Response: The department declines to reduce the timeframe for locating individuals because it believes that the two-consecutive-month timeframe is necessary to keep a specialized, vulnerable population enrolled in services. The 30-day timeframe is simply not enough time to find an individual with a limited ability to pay phone bills or who may move often, be hospitalized, or be incarcerated. No change was made as a result of the comment.

Comment: The commenter suggested that the routine case management documentation requirements in §412.413(a)(1) duplicate the treatment plan requirements in §412.407.

Response: The department agrees that the sections parallel each other. Because of the new routine case management service documentation required by federal regulators, the department believes it important to clarify those requirements for routine case management services. No change was made as a result of the comment.

In §412.401 and §412.402, concerning "Purpose" and "Application," respectively, minor editorial revisions were made.

Concerning §412.407(b)(10), the department has added a provision authorizing Medicaid reimbursement for meeting face-to-face with the LAR, with or without the child or adolescent being present, to provide a service that assists the child or adolescent in gaining and coordinating access to necessary care and services. Accordingly, the remaining paragraphs in the subsection were renumbered.

In §412.414(a), the authorization for reimbursement of child and adolescent services under §412.407(b)(10) was added to this section.

SUBCHAPTER I. MENTAL HEALTH CASE MANAGEMENT SERVICES

25 TAC §§412.401 - 412.417

STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §534.058, which requires the department to develop standards of care for the services provided by local mental health

authorities and their subcontractors; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300263
Lisa Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: August 3, 2012
For further information, please call: (512) 776-6990

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SUBCHAPTER I. MH CASE MANAGEMENT

25 TAC §§412.401 - 412.416

STATUTORY AUTHORITY

The new sections are authorized by Health and Safety Code, §534.058, which requires the department to develop standards of care for the services provided by local mental health authorities and their subcontractors; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

§412.401. Purpose.

The subchapter describes requirements for providing mental health case management services (MH case management services) funded by or through the department.

§412.402. Application.

The subchapter applies to providers of MH case management services.

§412.403. Definitions.

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise.

(1) Adolescent--An individual who is at least 13 years of age, but younger than 18 years of age.

(2) Adult--An individual who is 18 years of age or older.

(3) Assessment or reassessment--A systematic process for determining an individual's need for any clinically necessary medical, educational, social, or other services (e.g., taking client history, gathering information from other sources, identifying the needs of the individual, and completing related documentation).

(4) Business day--Any day except a Saturday, Sunday, or legal holiday listed in the Texas Government Code, §662.021.

(5) Case manager--An employee who provides MH case management services.

(6) Child--An individual who is at least three years of age, but younger than 13 years of age.

(7) CFR--Code of Federal Regulations.

(8) Community based--A description of the location where routine or intensive case management services are provided (i.e., in an individual's community).

(9) Community mental health center or CMHC--An entity established in accordance with the Texas Health and Safety Code, §534.001, as a community mental health center or a community mental health and mental retardation center.

(10) Community resources--People or entities providing services that address the identified needs of individuals receiving MH case management services (e.g., providers of medical care, food, clothing, child care, employment, or housing).

(11) Community services specialist or CSSP--A staff member who, as of August 31, 2004:

(A) has received:

(i) a high school diploma; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state; and

(B) has had three continuous years of documented full-time experience in the provision of MH case management services; and

(C) has demonstrated competency in the provision and documentation of MH case management services in accordance with this subchapter and the *MH Case Management Billing Guidelines.*

(12) Crisis--A situation in which:

(A) the individual presents an immediate danger to self or others;

(B) the individual's mental or physical health is at risk of serious deterioration; or

(C) an individual believes that he or she presents an immediate danger to self or others or that his or her mental or physical health is at risk of serious deterioration.

(13) Day--A calendar day, unless otherwise specified.

(14) Department--Department of State Health Services (DSHS).

(15) Designee--A person or entity named by the department to act on its behalf.

(16) Dual relationship--A situation that occurs if a case manager interacts with an individual in more than one capacity, whether it be before, during, or after the professional, social, or business relationship. Dual relationships can occur simultaneously or consecutively.

(17) Employee--A person who receives a W2 Wage and Tax Statement from a provider.

(18) Individual--A person seeking or receiving MH case management services.

(19) Institution for mental diseases or IMD--Based on 42 CFR §435.1009, a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing psychiatric diag-

nosis, treatment, or care of individuals with mental illness, including medical attention, nursing care, and related services.

(20) Intensive case management--A focused effort to coordinate community resources that assist a child or adolescent in gaining access to necessary care and services appropriate to the child's or adolescent's needs. The standards for providing intensive case management services are set forth in §412.407 of this title (relating to MH Case Management Services Standards).

(21) Intensive case management plan or plan--A written document that is part of the medical record and is developed by a case manager, in collaboration with the individual and the individual's LAR or primary caregiver, that identifies services needed by the individual and sets forth a plan for how the individual may gain access to the identified services.

(22) Legally authorized representative or LAR--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, including, but not limited to, a parent, guardian, or managing conservator.

(23) Level of care or LOC--A designation given to the department's standardized packages of mental health services, based on the uniform assessment and the utilization management guidelines, which specify the type, amount, and duration of MH case management services to be provided to an individual.

(24) Life domains--Areas of life in which a child or adolescent has unmet needs, including, but not limited to safety, health, emotional, psychological, social, educational, cultural, and legal needs.

(25) Medically necessary--A clinical determination made by an LPHA that services:

(A) are reasonable and necessary for the treatment of a mental health disorder or to improve, maintain, or prevent deterioration of functioning resulting from such a disorder;

(B) are provided in accordance with accepted standards of practice in behavioral health care;

(C) are furnished in the most appropriate and least restrictive setting in which services can be safely provided;

(D) are at the most appropriate level or amount of service that can be safely provided; and

(E) could not have been omitted without adversely affecting the individual's mental and/or physical health or the quality of care rendered.

(26) Mental health (MH) case management services--Activities that assist an individual in gaining and coordinating access to necessary care and services appropriate to the individual's needs. Case management activities include assessment, recovery planning, referral and linkage, and monitoring and follow up. Activities may be provided as routine case management or intensive case management.

(27) Monitoring and follow-up--Activities and contacts that are necessary to ensure that referrals and linkages are effectively implemented and adequately addressing the needs of the individual. The activities and contacts may be with the individual, LAR, primary caregiver, family members, providers, or other people and entities to determine whether services are being furnished, the adequacy of those services, and changes in the needs or status of the individual.

(28) Primary caregiver--A person 18 years of age or older who:

(A) has actual care, control, and possession of a child or adolescent; or

(B) has assumed responsibility for providing shelter and care for an adult.

(29) Provider--A community mental health center that has a contract with the department to provide general revenue-funded MH case management services, Medicaid-funded MH case management services, or both.

(30) Qualified mental health professional-community services or QMHP-CS--A staff member who meets the definition of a QMHP-CS set forth in Subchapter G of this chapter (relating to Mental Health Community Services Standards).

(31) Recovery--A process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(32) Recovery plan or treatment plan--A written plan developed with the individual and, as required, the LAR and a QMHP-CS that specifies the individual's recovery goals, objectives, and strategies/interventions in conjunction with the uniform assessment that guides the recovery process and fosters resiliency as further described in §412.322(e) of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization) concerning content and timeframe of treatment plan.

(33) Recovery planning--A systematic process for ensuring the individual's active participation and allowing the LAR, and the primary caregiver and others to develop goals and identify a course of action to respond to the clinically assessed needs. The assessed needs may address medical, social, educational, and other services needed by the individual.

(34) Referral and linkage--Activities that help link an individual with medical, social, and educational providers, and with other programs and services that are capable of providing needed services (e.g., referrals to providers for needed services and scheduling appointments).

(35) Routine case management--Services that assist an individual in gaining and coordinating access to necessary care and services appropriate to the individual's needs. The standards for providing routine case management services are set forth in §412.407 of this title.

(36) Site based--The location where routine case management services are usually provided (i.e., the case manager's place of business).

(37) Staff member--Provider personnel, including a full-time and part-time employee, contractor, or intern, but excluding a volunteer.

(38) Strengths based--The concept used in service delivery that identifies, builds on, and enhances the capabilities, knowledge, skills, and assets of the child, adolescent, LAR, or primary caregiver, and family, their community, and other team members. The focus is on increasing functional strengths and assets rather than on the elimination of deficits.

(39) TAC--Texas Administrative Code.

(40) Uniform assessment--An assessment adopted by the department that is used for recommending an appropriate level of care (LOC).

(41) Utilization management guidelines--Guidelines developed by the department that establish the type, amount, and duration of MH case management services for each LOC.

(42) Wraparound process planning or other department-approved model--A strengths-based course of action involving a child or

an adolescent and family, including any additional people identified by the child or adolescent, LAR, primary caregiver, and family, that results in a unique set of community services and natural supports that are individualized for the child or adolescent to achieve a positive set of identified outcomes.

§412.407. MH Case Management Services Standards.

(a) Assessment. An individual is assessed according to §412.406 of this title (relating to Authorization for MH Case Management Services) to determine the LOC necessary to address the individual's needs. If the individual needs either routine or intensive case management the provider must assign a case manager according to §412.404(b) of this title (relating to Provider Requirements). MH case management services, as well as attempts to provide case management, must be documented according to §412.413 of this title (relating to Documenting MH Case Management Services).

(1) MH case management services must:

(A) be delivered according to the department's utilization management guidelines, which are described in §412.415 of this title (relating to Fair Hearings and Appeal Processes); and

(B) include regular, but at least annual, monitoring of service effectiveness and proactive crisis planning and management.

(2) Case managers must recognize that:

(A) an LAR as authorized by law may act on behalf of an individual in matters such as accepting or declining services; and

(B) a primary caregiver who is not the individual's LAR is included in recovery planning and discussions that relate to the individual if written permission is obtained from the individual or LAR.

(b) Routine case management. Routine case management is provided to eligible adults, children, or adolescents and is primarily a site-based service. A case manager assigned to an individual who is authorized to receive routine case management services must:

(1) meet face-to-face with the individual and the individual's LAR or primary caregiver within 14 days after the case manager is assigned to the individual or document why the meeting did not occur;

(2) assist the individual in identifying the individual's immediate needs and in determining access to community resources that may address those needs;

(3) identify the strengths, service needs, and assistance required to address the identified needs;

(4) identify the goals and actions required to meet the individual's identified needs;

(5) specify the goals and actions to be accomplished;

(6) develop a timeline for obtaining the needed services;

(7) take the steps that are necessary to accomplish the goals required to meet the individual's identified needs by using referral, linking, advocacy, and monitoring;

(8) meet face-to-face with the individual upon the individual's, the LAR's, or the primary caregiver's request, or document why the meeting did not occur;

(9) reassess the individual's needs at least annually or as changes occur;

(10) meet face-to-face with the LAR, with or without the child or adolescent being present, to provide a service that assists the child or adolescent in gaining and coordinating access to necessary care and services;

(11) meet face-to-face with the individual and the LAR or primary caregiver upon notification of a clinically significant change in the individual's functioning, life status, or service needs, or document why the meeting did not occur;

(12) if notified that the individual is in crisis, coordinate with the appropriate providers of emergency services to respond to the crisis, as described in Chapter 412, Subchapter G, specifically §412.321 of this title (relating to Crisis Services); and

(13) develop a timeline for reevaluating the individual's needs.

(c) Intensive case management. Intensive case management is provided to eligible children and adolescents and is primarily community-based. A case manager assigned to a child or adolescent who is authorized to receive intensive case management services must:

(1) develop an intensive case management plan (plan) based on the child's or adolescent's needs that may include information across life domains from relevant sources, including:

(A) the child or adolescent;

(B) the LAR or primary caregiver;

(C) other agencies and organizations providing services to the child or adolescent;

(D) the individual's medical record; and

(E) other sources identified by the individual, LAR, or primary caregiver;

(2) meet face-to-face with the child or adolescent and the LAR or primary caregiver:

(A) within seven days after the case manager is assigned to the child or adolescent;

(B) within seven days after discharge from an inpatient psychiatric setting, whichever is later; or

(C) document the reasons the meeting did not occur;

(3) meet face-to-face with the child or adolescent and the LAR or primary caregiver according to the child's or adolescent's plan or document why the meeting did not occur;

(4) identify the child or adolescent's strengths, service needs, and assistance that will be required to address the identified needs in the plan;

(5) comply with subsection (b)(4) - (13) of this section;

(6) incorporate wraparound process planning or other department-approved model in developing a plan that addresses the child's or adolescent's unmet needs across life domains, in accordance with the department's utilization management guidelines and subsection (d) of this section;

(7) take steps that are necessary to assist the child or adolescent in gaining access to the needed services and service providers, including:

(A) making referrals to potential service providers;

(B) initiating contact with potential service providers;

(C) arranging, and if necessary to facilitate linkage, accompanying the child or adolescent to initial meetings and non-routine appointments;

(D) arranging transportation to ensure the child's or adolescent's attendance;

(E) advocating with service providers; and

(F) providing relevant information to service providers;

(8) monitor the child's or adolescent's progress toward the outcomes set forth in the plan, including:

(A) gathering information from the child or adolescent, current service providers, LAR, primary caregiver, and other resources;

(B) reviewing pertinent documentation, including the child's or adolescent's clinical records, and assessments;

(C) ensuring that the plan was implemented as agreed upon;

(D) ensuring that needed services were provided;

(E) determining whether progress toward the desired outcomes was made;

(F) identifying barriers to accessing services or to obtaining maximum benefit from services;

(G) advocating for the modification of services to address changes in the needs or status of the child or adolescent;

(H) identifying emerging unmet service needs;

(I) determining whether the plan needs to be modified to address the child's or adolescent's unmet service needs more adequately;

(J) revising the plan as necessary to address the child's or adolescent's unmet service needs;

(K) a description of the intensive case management services to be provided by the case manager; and

(L) a statement of the maximum period of time between face-to-face contacts with the child or adolescent, and the LAR or primary caregiver, determined in accordance with the utilization management guidelines.

(d) Wraparound process planning. Wraparound process planning or other department-approved model may include, but is not limited to:

(1) a list of identified natural strengths and supports;

(2) a crisis plan developed in collaboration with the LAR, caregiver, and family that identifies circumstances to determine a crisis that would jeopardize the child's or adolescent's tenure in the community and the actions necessary to avert such loss of tenure;

(3) a prioritized list of the child's or adolescent's unmet needs that includes a discussion of the priorities and needs expressed by the child or adolescent and the LAR or primary caregiver;

(4) a description of the objective and measurable outcomes for each of the unmet needs as well as a projected time frame for each outcome;

(5) a description of the actions the child or adolescent, the case manager, and other designated people take to achieve those outcomes; and

(6) a list of the necessary services and service providers and the availability of the services.

§412.414. Medicaid Reimbursement.

(a) In accordance with §412.407 of this title (relating to MH Case Management Services Standards), a billable event is a face-to-face contact during which the case manager provides an MH case management service to an:

(1) individual who is Medicaid eligible; or

(2) LAR on behalf of a child or adolescent who is Medicaid eligible.

(b) A unit of service for MH case management services is 15 continuous minutes.

(c) The department shall not reimburse a provider for Medicaid MH case management services if:

(1) the individual who was provided the service did not meet the eligibility requirements set forth in §412.405 of this title (relating to Eligibility for MH Case Management Services) at the time the service was provided;

(2) the service provided was an integral and inseparable part of another service;

(3) the service was provided by a person who was not qualified in accordance with §412.411(a) of this title (relating to MH Case Management Employee Qualifications);

(4) the service provided was not the type, amount, and duration authorized by the department or its designee;

(5) the service was not provided or documented in accordance with this subchapter;

(6) the service provided is in excess of eight hours per individual per day; or

(7) the services provided do not conform to the requirements set forth in the department's *MH Case Management Billing Guidelines.*

(d) The department shall not reimburse a provider for Medicaid MH case management services for coordination activities that are included in the provision of:

(1) rehabilitative crisis intervention services, as described in Chapter 419, Subchapter L, specifically §419.457 of this title (relating to Crisis Intervention Services); or

(2) psychosocial rehabilitative services, as described in Chapter 419, Subchapter L, specifically §419.459 of this title (relating to Psychosocial Rehabilitative Services).

(e) If Medicaid-funded MH case management services are continued prior to a fair hearing, as required by 1 TAC §357.11 (relating to Notice and Continued Benefits), the provider may file a claim for such services.

(f) An individual is eligible for Medicaid-funded MH case management services if, in addition to the criteria set forth in §412.405 of this title, the individual is:

(1) eligible for Medicaid;

(2) not an inmate of a public institution, as defined in 42 CFR §435.1009;

(3) not a resident of an intermediate care facility for persons with mental retardation as described in 42 CFR §440.150;

(4) not a resident of an IMD;

(5) not a resident of a Medicaid-certified nursing facility, unless the individual has been determined through a pre-admission screening and resident review assessment to be eligible for the specialized service of MH case management services or the individual is expected to be discharged to a non-institutional setting within 180 days;

(6) not a recipient of MH case management services under another Medicaid program (e.g., the Home and Community Services waiver program or Texas Health Steps); and

(7) not a patient of a general medical hospital.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300264
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: February 14, 2013
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For further information, please call: (512) 776-6990

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 4. CONSUMER ASSISTANCE; CLAIM PROCESSES

28 TAC §§5.4200, 5.4211 - 5.4222, 5.4231 - 5.4241, 5.4251 - 5.4253

The commissioner of insurance adopts new 28 Texas Administrative Code §§5.4200, 5.4211 - 5.4222, 5.4231 - 5.4241, and 5.4251 - 5.4253, concerning appraisal and mediation processes for the Texas Windstorm Insurance Association (TWIA). The commissioner adopts §§5.4200, 5.4211, 5.4213, 5.4216 - 5.4220, 5.4222, 5.4231 - 5.4233, 5.4235, 5.4240, 5.4241, and 5.4252 with changes to the proposed text published in the October 19, 2012, issue of the *Texas Register* (37 TexReg 8260). The commissioner adopts §§5.4212, 5.4214, 5.4215, 5.4221, 5.4234, 5.4236 - 5.4239, 5.4251, and 5.4253 without changes to the proposed text.

REASONED JUSTIFICATION. These rules are necessary to implement new TWIA appraisal and mediation processes enacted by House Bill 3, 82nd Legislature, First Called Session, codified in Insurance Code §2210.574 and §2210.575. House Bill 3 created specific claims handling processes for the association in Insurance Code Chapter 2210, Subchapter L-1. Insurance Code §2210.574 establishes an appraisal process, and Insurance Code §2210.575 establishes a mediation process. Insurance Code §2210.580 requires the commissioner to adopt rules regarding the provisions of Insurance Code Chapter 2210, Subchapter L-1, including:

(1) qualifications and selection of appraisers for the appraisal process;

(2) qualifications and selection of mediators for the mediation process;

(3) procedures and deadlines for association claims handling; and

(4) any other matters regarding claims handling that are not inconsistent with Insurance Code Chapter 2210.

Further, Insurance Code §2210.575 requires the commissioner to establish rules for the mediation process, including provisions for expediting alternative dispute resolution.

The adopted rules implement Insurance Code §2210.574 by establishing the appraisal process that applies when a claimant disputes the amount of the loss that the association will pay for a claim. The rules set forth deadlines for the appraisal process, including a limit on deadline extensions, to promote efficiency. The rules establish qualifications for appraisers and umpires and establish a roster of qualified umpires that may be selected by the Texas Department of Insurance (department) if the appraisers disagree on an umpire. To promote a fair process, the rules address ethical requirements and require appraisers and umpires to disclose any conflicts of interest that may affect participation in the appraisal.

These rules also address the costs associated with the appraisal. Each party must pay one-half of all reasonable and necessary costs incurred by the appraisal. The parties will pay department-selected umpires on an hourly basis.

The adopted rules implement Insurance Code §2210.575 by establishing a mediation process that TWIA may require when a claimant files a notice of intent to sue the association because of a denial of coverage. The rules establish the qualifications for mediators and conflicts of interests that may prohibit a mediator from participating in mediation. The mediation rules establish the mediator roster maintained by the department and eligibility requirements for mediators to register with the department. Mediators may be removed from the roster under circumstances described in §5.4234. Further, the mediation rules provide that the department may select a mediator when the parties are unable to agree on a mediator.

The rules also establish obligations for all mediators, TWIA, and claimants, to ensure a fair and efficient mediation process. All mediators must comply with ethical requirements, including conflicts of interests and disclosures. Each party must pay one-half of all reasonable and necessary costs incurred with the mediation. The rules also establish deadlines for the mediation.

The rules establish how requests and submissions can be made to the department. Parties may object to an umpire or mediator for reasons outlined in §5.4252. A claimant is not required to be represented by an attorney in the mediation. The rules also provide that the department may contract with another person to administer the roster of umpires and mediators.

The department made non-substantive changes to the rules for clarity and substantive changes in response to comments. In §5.4200(9), the department amended the definition of umpire and added the word "appraisal" before the word umpire for clarity. In §5.4200(10), the department deleted the word "appraiser" from the definition of umpire roster because the definition of umpire now clearly means appraisal umpires.

The department deleted §5.4217(c)(9) and renumbered subsection (c)(10) to become subsection (c)(9). This change removed an umpire's fees as a factor to consider in selecting an

umpire because the rules establish a set hourly fee for department-selected umpires. The department made corresponding changes to the factors the department considers when selecting a mediator in §5.4235(c)(9) and §5.4235(c)(10) because the mediation rules establish a set hourly fee for department-selected mediators. The department also changed "appraisers" to "parties" in §5.4235(g) because the parties, not the appraisers, choose mediators. The department also clarified §5.4219(e) and §5.4232(a) by adding "of this section" on references to subsections in those rules.

The department held a public hearing on the proposed rules on October 30, 2012. In response to written comments, the department amended §§5.4211, 5.4213, 5.4241, and 5.4252. Those amendments are discussed in the response to comments below.

HOW THE SECTIONS WILL FUNCTION. Section 5.4200 defines terms relevant to the appraisal. Sections 5.4211 - 5.4213 describe the appraisal process, set forth appraiser qualifications and conflicts of interest, and establish appraiser obligations. Sections 5.4214 - 5.4219 establish umpire qualifications and conflicts of interest, establish the roster of umpires maintained by the department, establish a procedure for removing an umpire, provide for selection of an umpire by the department, and set forth the obligations of all umpires and additional obligations for umpires selected by the department. Section 5.4220 concerns communications during the appraisal process and establishes confidentiality. Section 5.4221 sets forth the costs and responsibilities for the appraisal process. Section 5.4222 provides for an extension of deadlines during the appraisal process.

Section 5.4231 and §5.4232 establish the mediation process and mediator qualifications. Sections 5.4233 - 5.4237 establish the mediator roster maintained by the department, removal of the mediator from the roster, selection of a mediator by the department, obligations of all mediators, and additional obligations of mediators selected by the department. Section 5.4238 establishes TWIA's obligations during the mediation process. Section 5.4239 establishes the claimant's obligations during the mediation process. Section 5.4240 establishes mediation costs and responsibilities for those costs. Section 5.4241 addresses mediation deadlines and deadline extensions. Section 5.4251 and §5.4252 set forth requirements for requests and submissions to the department and establish a procedure for objecting to an umpire or mediator. Section 5.4253 provides that the department may contract with another entity to maintain the rosters for appraisers and mediators.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment: The Office of Public Insurance Counsel (OPIC) commented that §5.4211(b) should require TWIA to include an explanation of the appraisal process with its notice for accepting or denying coverage to ensure that the claimant has information to make an informed decision on whether to request an appraisal.

Agency Response: The department agrees with this comment and amends §5.4211(b) to require TWIA to send an explanation of the appraisal process along with the notice required by Insurance Code §2210.573.

Comment: OPIC commented that §5.4213(d)(2) should require the appraiser to follow the terms and conditions of the TWIA insurance policy when making an appraisal decision.

Agency Response: The department agrees and has amended §5.4213(d) to include "association insurance policy" to make it clear that the appraiser must follow the terms and conditions of the insurance policy.

Comment: OPIC commented that §5.4241(e), regarding deadline extensions, should be limited to the deadlines extended by the commissioner because a deadline extension agreed to by TWIA and the claimant is not statutorily limited to 120 days.

Agency Response: The department agrees and has clarified that the 120-day limit on deadline extensions in Insurance Code §2210.581(b) applies only to extensions by the commissioner. Also, in §5.4241(e), the department revised the requirement for extension limits by adding "[F]or claims filed during a particular catastrophe year" to be consistent with Insurance Code §2210.581(b).

Comment: OPIC commented that §5.4252(a)(1)(B) is limited in its application to an umpire and should be amended to apply to both an umpire and a mediator.

Agency Response: The department agrees and has amended the rule text to clarify that §5.4252(a)(1)(B) applies to good cause objections both to an umpire and to a mediator. The department added "or mediator" after "the selection of the umpire" so that the rule clearly refers to umpires and mediators.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For with changes: OPIC.

STATUTORY AUTHORITY. The new sections are adopted under Government Code Chapter 2155 and Insurance Code §§2210.008, 2210.575, 2210.580, and 36.001. Government Code Chapter 2155 gives the department authority to issue contracts for services. Insurance Code §2210.008 provides that the commissioner may adopt rules as reasonable and necessary to implement Chapter 2210 of the Insurance Code. Section 2210.575 requires the commissioner to establish rules for alternative dispute resolution for disputes concerning denied coverage. Section 2210.580 provides that the commissioner must adopt rules regarding the qualifications and selection of appraisers for the appraisal process, qualifications and selection of mediators, and procedures and deadlines for the payment and handling of claims by the association. Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§5.4200. Definitions.

The following definitions apply to this division:

(1) Appraiser--A person who is qualified to be an appraiser under §5.4212 of this title (relating to Appraisal Process - Appraiser Qualifications and Conflicts of Interest) and is selected by the association or a claimant to participate in the appraisal process.

(2) Association--Texas Windstorm Insurance Association. "Association" includes any authorized representative of the Texas Windstorm Insurance Association.

(3) Claimant--A person who makes a claim under an association policy.

(4) Department--The Texas Department of Insurance.

(5) Mediator--A person who is qualified to be a mediator under §5.4232 of this title (relating to Mediation Process - Mediator Qualifications and Conflicts of Interest).

(6) Mediator roster--The roster of mediators maintained by the department.

(7) Mediator selection panel--A short list of potential mediators from the mediator roster from which the department will select a mediator.

(8) Party--The association or the claimant. "Party" includes employees and other representatives of a party.

(9) Umpire--A person who is qualified to be an appraisal umpire under §5.4214 of this title (relating to Appraisal Process - Umpire Qualifications and Conflicts of Interest) and is selected by the appraisers or the department to participate in the appraisal process.

(10) Umpire roster--The roster of umpires maintained by the department.

(11) Umpire selection panel--A short list of potential umpires from the umpire roster from which the department will select an umpire.

§5.4211. Appraisal Process.

(a) Applicability. Sections 5.4211 - 5.4222 of this title are the appraisal process and apply when:

(1) the association has accepted coverage for a claim, in full or in part;

(2) the claimant disputes the amount of loss the association will pay for the accepted portion of the claim; and

(3) the claimant demands an appraisal under the association policy within the time frame allowed by Insurance Code §2210.574.

(b) Appraisal explanation. The association must include an explanation of the appraisal process with the notice accepting or denying coverage under Insurance Code §2210.573.

(c) Appraiser selection. The association and the claimant must each select an appraiser who is independent and qualified under §5.4212 of this title (relating to Appraisal Process - Appraiser Qualifications and Conflicts of Interest).

(d) Appraiser fee information. No later than five days after hiring an appraiser, each party must tell the other party the fees to be charged by the appraiser.

(e) Umpire selection.

(1) The appraisers must select an umpire who is independent and qualified under §5.4214 of this title (relating to Appraisal Process - Umpire Qualifications and Conflicts of Interest).

(2) If the appraisers are unable to agree on an umpire, either appraiser may request the department to select an umpire. The appraiser must submit the request under §5.4251 of this title (relating to Requests and Submissions to the Department). The request must include the following information:

(A) the type of policy;

(B) a description of the claim and, if known, the claimed value of the covered loss;

(C) the association's claim acceptance letter, including the amount the association will pay for the loss; and

(D) any other information that the department requests.

(f) Umpire participation. The selected umpire must participate in the resolution of the dispute if the appraisers fail to agree on a decision.

(g) Decision. If the appraisers agree on the amount of loss, their decision is binding on the parties as to the amount of loss the association will pay for the claim. If the parties cannot agree, and the umpire participates, an itemized decision agreed to by any two of these three is binding on the parties as to the amount of loss the association will pay for the claim. Parties may challenge the decision only as permitted by Insurance Code §2210.574.

§5.4213. Appraisal Process - Appraiser Obligations.

(a) Conflicts. An appraiser must disclose to both parties any potential conflicts of interest no later than the fifth day after being hired, and before the appraiser begins work on the appraisal. Potential conflicts of interest are listed in §5.4212 of this title (relating to Appraisal Process - Appraiser Qualifications and Conflicts of Interest).

(b) Withdrawal prohibited. After an appraiser has accepted the responsibility for an appraisal, the appraiser may not withdraw or abandon the appraisal unless compelled to do so by unanticipated circumstances that would render it impossible or impractical to continue. The appraiser may not charge a fee for services if the appraiser withdraws or abandons the appraisal.

(c) Postponement. An appraiser must postpone the appraisal for a reasonable amount of time if a party shows good cause for a postponement.

(d) Duties. An appraiser must:

(1) consider all information provided by the parties and any other reasonably available evidence material to the claim;

(2) follow the association insurance policy when making the appraisal decision;

(3) carefully decide all issues submitted for determination regarding the amount of loss; and

(4) give the parties and the other appraiser an itemized written appraisal.

(e) Fairness. An appraiser must conduct the appraisal process to advance the fair and efficient resolution of the matters submitted for decisions.

(f) Independence. An appraiser may not:

(1) permit outside pressure to affect the appraisal; or

(2) delegate the duty to decide to any other person.

(g) Prohibited communications. An appraiser may not communicate with an appraisal umpire without including the other party or the other party's appraiser, except as permitted under §5.4220 of this title (relating to Appraisal Process - Prohibited Communications).

§5.4216. Appraisal Process - Removal of Umpire from Roster.

(a) Voluntary removal. An umpire may request removal from the roster at any time. The umpire must submit the request under §5.4251 of this title (relating to Requests and Submissions to the Department).

(b) Removal by department. The department may, in its sole discretion, remove an umpire from the umpire roster for:

(1) alleged dishonest, incompetent, fraudulent, or unethical behavior;

(2) alleged failure to respond promptly and completely to requests from the department and where the actions or failure to act are counter to the purpose of the appraisal;

(3) a disciplinary action by any other agency or disciplinary authority against the umpire, regardless of whether the agency or disciplinary authority's regulation relates to the appraisal;

(4) conviction of, or accepting deferred adjudication for, a crime under state or federal law;

(5) a disqualifying conflict of interest listed in §5.4214 of this title (relating to Appraisal Process - Umpire Qualifications and Conflicts of Interest);

(6) failure to comply with any requirement of this title; or

(7) other factors relevant to the umpire's qualifications, conflicts of interest, or performance.

§5.4217. Appraisal Process - Umpire Selection by Department.

(a) Applicability. This section applies when the appraisers are unable to agree on an umpire and a party requests the department to select an umpire.

(b) Notice. The department will notify at least five umpires of possible inclusion on an umpire selection panel.

(c) Factors. When selecting an umpire for the umpire selection panel, the department may consider:

(1) the umpire's preferred geographic locations and types of claims;

(2) the proximity of the claimant and the umpire;

(3) the umpire's areas of training and expertise;

(4) the extent of the umpire's experience with appraisal and with property damage claims;

(5) the subject of the dispute;

(6) the type of policy;

(7) the value and complexity of the claim;

(8) any conflicts of interest; and

(9) other factors relevant to the dispute.

(d) Umpire's response. Each umpire notified under subsection (b) of this section must respond to the department no later than the fifth day after receiving the notice.

(1) The umpire's response must state whether the umpire will accept or reject selection as umpire for the appraisal; and

(2) provide:

(A) an up-to-date resume, curriculum vitae, or brief biographical sketch of the umpire;

(B) a statement of whether the umpire is insured by the association;

(C) a description of the nature and extent of any prior knowledge the umpire has of the dispute;

(D) a description of any contacts with either party, including association employees, within the previous three years;

(E) a description of other known potential conflicts of interest listed in §5.4214 of this title (relating to Appraisal Process - Umpire Qualifications and Conflicts of Interest); and

(F) any new disqualifying conflicts of interest listed in §5.4214 of this title.

(e) Umpire selection panel. From the information provided, the department will determine which umpires will be on the umpire selection panel. The department will send the umpire selection panel to each party and each appraiser, along with the information the listed umpires provided.

(f) Selection by agreement. The appraisers may select an umpire from the umpire selection panel. If the appraisers agree on an umpire, the association must inform the department no later than the third day after the agreement.

(g) Selection if the appraisers fail to agree. If the appraisers are unable to agree on an umpire from the umpire selection panel:

(1) each appraiser or party may object to umpires on the umpire selection panel under §5.4252(a)(1)(A) and (2)(A) of this title (relating to Objections); and

(2) the department will select an umpire from the umpires on the umpire selection panel that neither appraiser has objected to.

(h) Notice. The department will notify the umpire selected under subsection (f) or (g) of this section and give the umpire the claim information provided under §5.4211 of this title (relating to Appraisal Process).

§5.4218. Appraisal Process - Umpire Obligations.

(a) Conflicts. An umpire must disclose to both parties any potential conflicts of interest. Conflicts of interest are listed in §5.4214 of this title (relating to Appraisal Process - Umpire Qualifications and Conflicts of Interest). The umpire must disclose the conflicts of interest no later than the fifth day after being hired, and before the umpire begins work. A person may not serve as umpire in an appraisal for which the person has a disqualifying conflict of interest.

(b) Work. The umpire may begin work only if the association's appraiser and the claimant's appraiser fail to reach an agreement on the appraisal amount and tell the umpire in writing to begin work.

(c) Review information. The parties and appraisers may request the umpire to review any information related to the claim, including itemized estimates and supporting documents such as photographs and diagrams. The umpire must review in detail all information the appraisers and parties submit related to the dispute, including the itemized appraisals. At a party's request, the umpire may also consider any conflicts of interest or objections to appraisers. The umpire must allow each appraiser a fair opportunity to present evidence and argument. The umpire may ask questions, and request documents or other evidence, including expert reports.

(d) Limited scope. The umpire's work may only cover items about which the two appraisers disagree. The umpire must review the differences and seek agreement with one or both appraisers regarding the disputed items. The umpire may accept either appraiser's scope, quantities, values, or costs on items in dispute or may develop an independent decision on an item. The umpire may not visit the claimant's property without agreement from both appraisers.

(e) Decision. An itemized decision agreed to by both appraisers or by one appraiser and the umpire is binding on the parties as to the amount of loss the association will pay for the claim. The umpire may enter into an itemized decision with one or both appraisers on a compromise basis. The umpire can issue a decision if agreement is reached on the final total, even if there is disagreement on some of the individual items. The umpire must promptly give the parties and the appraisers an itemized written decision.

(f) Ethics. After accepting the responsibility to be the umpire for an appraisal, the umpire:

(1) may not withdraw or abandon the appraisal unless compelled to do so by unanticipated circumstances that would render it impossible or impractical to continue;

(2) may not be present or participate in settlement discussions unless requested by both parties; and

(3) must decide all matters fairly, exercising independent judgment and utmost integrity. An umpire may not permit outside pressure to affect the appraisal and may not delegate the umpire's decision under subsection (e) of this section to any other person.

(g) Fees. The umpire must disclose all fees and must state whether the umpire charges for a minimum number of hours. The umpire may specify different charges for different types or values of claims. The parties may not pay the umpire on a contingent fee basis, percentage of the decision, barter arrangement, gift, favor, or in-kind exchange. This subsection does not apply to department-selected umpires under §5.4217 of this title (relating to Appraisal Process - Umpire Selection by Department).

§5.4219. Appraisal Process - Additional Obligations for Department-Selected Umpires.

(a) Applicability. The following umpire obligations apply only when the department selects an umpire under §5.4217 of this title (relating to Appraisal Process - Umpire Selection by Department).

(b) Notices. No later than the seventh day after receiving notice of being selected for an appraisal, the umpire must send a notice to the parties and to the appraisers. This deadline may not be extended. The notice must:

(1) be in writing;

(2) inform the parties and appraisers that the umpire has been selected;

(3) state whether the umpire is insured by the association; and

(4) inform the parties of their right to object to the umpire under §5.4252 of this title (relating to Objections).

(c) Contract. Before the umpire begins work, the parties and the selected umpire must sign an appraisal contract. The contract must require:

(1) the parties and the umpire to comply with the sections of this division related to appraisal; and

(2) each party to pay one-half of all appraisal costs described in §5.4221 of this title (relating to Appraisal Process - Costs).

(d) Disposition. The umpire must notify the department when the appraisal process is complete and of the appraisal decision.

(e) Fees. The umpire must charge an hourly rate of $150 and may charge a two-hour minimum fee.

(1) The parties may not pay an umpire on a contingent fee basis, percentage of the decision, barter arrangement, gift, favor, or in-kind exchange.

(2) The umpire may charge for reasonable incurred travel costs, including mileage, meals, and lodging, according to the travel regulations adopted by the Texas Comptroller of Public Accounts under Government Code §660.021. The umpire must provide an estimate of travel costs as an addendum to the contract under subsection (c) of this section.

§5.4220. Appraisal Process - Prohibited Communications.

(a) Ex parte communications. After an umpire is selected and before the appraisal is completely resolved:

(1) The umpire may not communicate separately with either party or either party's appraiser regarding the pending appraisal unless the umpire notifies the other party and gives the other party the opportunity to participate.

(2) No party or appraiser may communicate with the umpire regarding the pending appraisal without including the other party or appraiser, except that:

(A) an appraiser may identify the parties' counsel or experts;

(B) an appraiser may discuss logistical matters, such as setting the time and place of meetings or making other arrangements for the conduct of the proceedings. The appraiser initiating this contact with the umpire must promptly inform the other appraiser; or

(C) if an appraiser fails to attend a meeting or conference call after receiving notice, or if both parties agree in writing, the opposing appraiser may discuss the claim with the umpire who is present.

(b) Confidentiality. After an umpire is notified that the umpire may be on an umpire selection panel, the umpire may not at any time communicate any information about the appraisal with anyone besides the parties, the association, the appraisers, and the department. However, the umpire may communicate information about the appraisal with the written consent of the parties.

§5.4222. Appraisal Process - Extensions of Deadlines.

(a) Extensions. For good cause, the commissioner may extend any deadline in this division related to appraisal, except the deadline for the umpire to notify the parties that the umpire is insured by the association, under §5.4218 of this title (relating to Appraisal Process - Umpire Obligations).

(b) Request for extension. To request the commissioner to extend a deadline, a party, appraiser, or umpire must send the request in writing to the department, under §5.4251 of this title (relating to Requests and Submissions to the Department). The request must explain the good cause for the extension. Good cause includes military deployment of the claimant.

(c) Extension limit. Deadline extensions may not exceed an aggregate of 120 days. This limit does not apply to extensions of the deadline to file an objection because an umpire is insured by the association.

§5.4231. Mediation Process.

(a) Applicability. Sections 5.4231 - 5.4241 of this title are the mediation process and apply when:

(1) the association has denied coverage for a claim, in full or in part;

(2) the claimant disputes the denial and gives the association a notice of intent to file suit; and

(3) the association has requested mediation under the association policy within the time frame allowed under Insurance Code §2210.575.

(b) Mediation explanation. At the same time the association requests mediation, the association must give the claimant a notice explaining the mediation process.

(c) Mediator selection. The association and the claimant must select a mediator who is qualified under §5.4232 of this title (relating to

Mediation Process - Mediator Qualifications and Conflicts of Interest). If the parties are unable to agree on a mediator, either party may request the department to select a mediator. The party must submit the request under §5.4251 of this title (relating to Requests and Submissions to the Department), and must include the following information:

(1) the type of policy;

(2) a description of the claim and, if known, the potential claim amount;

(3) the association's denial letter;

(4) the policyholder's notice of intention to file suit; and

(5) any other relevant information that the department requests.

(d) Representation. The parties may participate in the mediation without an attorney. Both parties must bring a person who is authorized to settle the case. An attorney representing the association may not attend the mediation unless an attorney representing the claimant participates.

(e) Review information. The parties may ask the mediator to review any information related to the claim, including itemized estimates and supporting documents, such as photographs and diagrams.

(f) Rules of evidence. The rules of evidence do not apply to mediation.

(g) Confidentiality. Unless the parties agree otherwise, all information revealed in the mediation is part of confidential settlement negotiations in anticipation of litigation. This includes any documents presented or created during the mediation.

(1) No one may make audio or visual recordings of the mediation.

(2) Parties must give any notes, other than a signed agreement between the parties made during the mediation, to the mediator to be destroyed.

(3) This rule does not affect the discoverability or admissibility of documents that are otherwise discoverable or admissible.

(h) Agreement. If the parties reach an agreement in mediation, they must put the agreement in writing. Both parties must sign the agreement.

(1) The agreement may include parts of the claim for which the association accepts coverage.

(2) The agreement may be a partial agreement resolving some parts of the dispute but not others.

(3) A mediation agreement does not affect rights on claims for damages that were undetected at the time of the agreement.

§5.4232. Mediation Process - Mediator Qualifications and Conflicts of Interest.

(a) Required qualifications. To qualify as a mediator, a person must:

(1) have completed a 40-hour basic mediation course:

(A) conducted by an alternative dispute resolution system described in Texas Civil Practice and Remedies Code §154.021(a)(1); or

(B) that complies with the mediation training standards established by the Texas Mediation Trainers Roundtable; and

(2) not have any disqualifying conflicts of interest listed in subsection (d) of this section.

(b) Preferred qualifications. The following qualifications are preferred:

(1) has conducted at least three mediations in the previous 12 months; and

(2) has experience mediating property damage claims.

(c) Potential conflicts. A potential conflict of interest exists when a mediator:

(1) is a former association or claimant employee;

(2) is a former association or claimant contractor or contractor's employee;

(3) is related within a degree of relationship described by Government Code §573.002 to:

(A) a former association employee;

(B) a former association contractor or contractor's employee;

(C) a former claimant employee; or

(D) a former claimant contractor or contractor's employee;

(4) is a current association policyholder;

(5) previously filed a claim with the association;

(6) is a current employee or contractor of an insurance company or public insurance adjusting company; or

(7) was a party or represented a party to a lawsuit with the association within the previous five years.

(d) Disqualifying conflicts. A potential mediator has a disqualifying conflict of interest if the mediator:

(1) is a current association or claimant employee, contractor, or contractor's employee, except that it is not a conflict for the mediator to be a contractor solely to serve as mediator for the pending mediation;

(2) is related within a degree of relationship described by Government Code §573.002 to:

(A) a current association employee;

(B) a current association contractor or contractor's employee;

(C) the claimant or a representative of the claimant;

(D) a current claimant employee; or

(E) a current claimant contractor or contractor's employee;

(3) currently has an open claim, or acts as a representative or public adjuster on an open claim with the association;

(4) is a party to or represents a party to a current lawsuit with the association;

(5) adjusted the loss or acted as a public adjuster on the loss involved in the claim, is related to the adjuster or public adjuster who adjusted the loss, or is an employee of the adjusting company or public insurance adjusting company that adjusted the loss or represented the claimant on the loss; or

(6) has any other direct or indirect interest, financial or otherwise, of any nature that substantially conflicts with the mediator's duties.

§5.4233. Mediation Process - Mediator Roster.

(a) Eligibility. To be placed on the mediator roster, a mediator must register with the department and must meet the qualifications in §5.4232 of this title (relating to Mediation Process - Mediator Qualifications and Conflicts of Interest).

(b) Registration. The registration must include contact information and details about:

(1) the mediator's mediation training;

(2) any mediation certification;

(3) any other relevant licenses or certifications;

(4) any training or experience relating to property damage claims;

(5) a general description of the approximate number, value, complexity, and nature of disputes mediated over the previous three years;

(6) the counties in which the mediator is willing to mediate;

(7) the types of policies, and value and complexity of claims the mediator is willing to mediate;

(8) potential conflicts of interest, under §5.4232 of this title;

(9) any professional disciplinary actions or criminal convictions;

(10) whether the mediator is insured by the association; and

(11) an up-to-date biography, resume, or curriculum vitae.

(c) Notice. A person is not on the mediator roster until the department sends written notice of placement on the roster.

(d) Limited number. The department may limit the number of mediators on the roster.

(e) Publication. The department will publish the mediator roster on the department's website. Published roster information will include a mediator's name, contact information, preferred types of claims, and preferred geographic areas.

(f) Disqualifying conflicts. The mediator must notify the department of a disqualifying conflict of interest, under §5.4232 of this title.

(g) Term. A mediator will be on the mediator roster for a term of three years, except as provided under §5.4234 of this title (relating to Mediation Process - Removal of Mediator from Roster). To remain on the roster for additional terms, a mediator must submit a new registration to the department.

(h) Submissions. Notices and registrations under this section must comply with §5.4251 of this title (relating to Requests and Submissions to the Department).

§5.4235. Mediation Process - Mediator Selection by Department.

(a) Applicability. This section applies when the parties are unable to agree on a mediator and a party requests the department to select a mediator.

(b) Notice. The department will notify at least five mediators of possible inclusion on a mediator selection panel.

(c) Factors. When selecting a mediator for the mediator selection panel, the department may consider:

(1) the mediator's preferred geographic locations and types of claims;

(2) the proximity of the claimant and the mediator;

(3) the mediator's areas of training and expertise;

(4) the extent of the mediator's experience with mediation and with property damage claims;

(5) the subject of the dispute;

(6) the type of policy;

(7) the value and complexity of the claim;

(8) any conflicts of interest; and

(9) other factors relevant to the dispute.

(d) Mediator's response. Each mediator notified under subsection (b) of this section must respond to the department no later than the fifth day after receiving the notice. The mediator's response must state whether the mediator will accept or reject selection as mediator for the mediation; and must provide:

(1) an up-to-date resume, curriculum vitae, or brief biographical sketch of the mediator;

(2) a statement of whether the mediator is insured by the association;

(3) a description of the nature and extent of any prior knowledge the mediator has of the dispute;

(4) a description of any contacts with either party, including association employees, within the previous three years;

(5) a description of other known potential conflicts of interest. Potential conflicts of interest are listed in §5.4232 of this title (relating to Mediation Process - Mediator Qualifications and Conflicts of Interest); and

(6) any new disqualifying conflicts of interest listed in §5.4232 of this title.

(e) Mediator selection panel. From the information provided, the department will determine which mediators will be on the mediator selection panel. The department will send the mediator selection panel to each party, along with the information the listed mediators provided.

(f) Selection by agreement. The parties may select a mediator from the mediator selection panel. If the parties agree on a mediator, the association must inform the department no later than the third day after the agreement.

(g) Selection if the parties fail to agree. If the parties fail to agree on a mediator from the mediator selection panel:

(1) each party may object to mediators on the mediator selection panel under §5.4252(a)(1)(A) and (2)(A) of this title (relating to Objections); and

(2) the department will select a mediator from the mediators on the mediator selection panel that neither party has objected to.

(h) Notice. The department will notify the mediator selected under subsection (e) or (f) of this section and give the mediator the claim information provided under §5.4231 of this title (relating to Mediation Process).

§5.4240. Mediation Process - Costs.

(a) One-half per party. Each party must pay one-half of all reasonable and necessary costs incurred or charged in connection with the mediation, including:

(1) mediator's fee;

(2) mediator's travel costs;

(3) cost of renting space for the mediation; and

(4) food or beverages provided during the mediation.

(b) Mediator fee if pre-mediation settlement. If the parties settle before mediation, the mediator may charge a reasonable fee for time already spent on preparation.

(c) Rescheduling fee. A party must pay the mediator a $50 rescheduling fee if the party cancels or fails to attend the mediation with less than 24 hours notice to the mediator before the mediation. This is in addition to any fee for the actual mediation.

(d) Failure to appear. If the association fails to appear for a scheduled mediation for which the claimant appears, the association must pay the claimant for any actual costs incurred in attending the mediation plus the value of lost wages.

(e) Payment from proceeds of claim. If the claimant fails to pay any amount owed for the mediation, the association may pay the amount owed out of any proceeds the association owes the claimant.

(f) Department not responsible. The department is not responsible for any mediation costs.

§5.4241. Mediation Process - Deadlines and Extensions.

(a) Deadline. Mediation must be completed by the 60th day after the association notifies the claimant that the association is requesting mediation, unless the deadline is extended. If the association does not ask the department to select a mediator before the 60-day deadline, or any extension of that deadline, the association waives its right to require mediation under Insurance Code §2210.575 and this division.

(b) Extensions.

(1) The association and the claimant may agree to extend the 60-day deadline for mediation in subsection (a) of this section.

(2) If the commissioner extends the 60-day deadline in subsection (a) of this section, the extension must comply with the 120-day limit in Insurance Code §2210.581(b).

(3) For good cause, the commissioner may extend any deadline in this division related to mediation, except the deadline for the mediator to notify the parties that the mediator is insured by the association, under §5.4236 of this title (relating to Mediation Process - Mediator Obligations), may not be extended.

(c) Lawsuit. If mediation is not complete by the 60-day deadline or an extension, the claimant may file suit.

(d) Request for extension. To request the commissioner to extend a deadline, a party or mediator must send the request in writing to the department, under §5.4251 of this title (relating to Requests and Submissions to the Department). The request must explain the good cause for the extension. Good cause includes military deployment of the claimant.

(e) Extension limit. For claims filed during a particular catastrophe year, deadline extensions by the commissioner may not exceed an aggregate of 120 days. This limit does not apply to extensions of the deadline to file an objection because a mediator is insured by the association.

§5.4252. Objections.

(a) Objections. A party or appraiser may object to an umpire or a mediator as follows:

(1) for good cause:

(A) no later than the third day after the party or appraiser receives the selection panel, based on the information provided with the selection panel, or based on other information not provided with the selection panel that is known to the party or the appraiser at the time the selection panel is received; and

(B) at any time no later than 30 days after the mediation or appraisal is complete based on other information not provided with the selection panel and discovered after the selection of the umpire or mediator; or

(2) because the umpire or mediator is insured by the association no later than the earlier of:

(A) the seventh day after receiving the selection panel and the information provided with it; or

(B) the seventh day before the mediator or umpire begins work.

(b) Details for objections for good cause. A party or appraiser may object for good cause based on information the department provides with a selection panel or based on other information. Good cause for an objection includes:

(1) any conflict of interest listed in §§5.4212, 5.4214, or 5.4232 of this title (relating to Appraisal Process - Appraiser Qualifications and Conflicts of Interest, Appraisal Process - Umpire Qualifications and Conflicts of Interest, or Mediation Process - Mediator Qualifications and Conflicts of Interest, respectively);

(2) a mediator or an umpire who lacks independence or is unable to competently or promptly handle the duties of a mediator or an umpire; or

(3) other reasons that would reasonably be expected to impair the mediation or appraisal.

(c) How to submit objections. All objections must be sent to the department under §5.4251 of this title (relating to Requests and Submissions to the Department). An objection must include the following information:

(1) names of the parties involved in the dispute;

(2) name of the person submitting the objection;

(3) the association claim number;

(4) name of the mediator or umpire that the party or appraiser wants to object to;

(5) an explanation of the good cause for objecting to the mediator or umpire; and

(6) an explanation of any direct financial or personal interest that the mediator or umpire has in the outcome of the dispute.

(d) Replacement. If the commissioner determines that good cause exists to replace a mediator or an umpire who was selected for a dispute, the commissioner will select a replacement mediator or umpire.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300269

Sara Waitt
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

28 TAC §7.18

The Texas Department of Insurance adopts amendments to §7.18, concerning the National Association of Insurance Commissioners Accounting Practices and Procedures Manual. These amendments are adopted without changes to the proposal published in the December 7, 2012, issue of the *Texas Register* (37 TexReg 9595) and will not be republished. These amendments primarily adopt by reference the March 2012 version of *The Accounting Practices and Procedures Manual,* published and issued by the NAIC. Additionally, the amendments make conforming changes to §7.18 to reflect the adoption of this version.

These amendments to §7.18 primarily seek to adopt by reference the National Association of Insurance Commissioners' (NAIC) substantive and other updates to the March 2012 version of *The Accounting Practices and Procedures Manual* (Manual) adopted by the NAIC in calendar year 2012. The amendments also delete or modify three existing Texas exceptions to the Manual. Additionally, the amendments make conforming changes to §7.18 to reflect these changes.

The Manual, published and issued by the NAIC, incorporates the statements of statutory accounting principles (SSAPs) adopted by the NAIC and various other appendices, including actuarial guidelines adopted by the NAIC. The SSAPs provide a national standard for insurers and health maintenance organizations (collectively referred to as "carriers" in this order) on how to properly record business transactions for the purpose of statutory reporting. The NAIC adopts these SSAPs through its maintenance of statutory accounting principles process, which includes a series of open meetings that offer the public the opportunity to comment on the proposed SSAPs. The NAIC annually updates the Manual to reflect any changes to the SSAPs made through this process or other changes to the Manual.

The department uses the Manual, including its appendices, as its source of statutory accounting principles and actuarial guidelines when analyzing financial reports and conducting statutory examinations and rehabilitations of carriers licensed in Texas unless a department rule or other state law provides otherwise. The department periodically adopts the Manual by reference, with certain modifications and exceptions, in §7.18 to codify this usage. Most recently, on October 12, 2012, the department amended §7.18 to adopt by reference the March 2012 version of the Manual to apply to all examinations conducted on or after December 31, 2011, and all financial statements filed with the department for reporting periods beginning on or after December 31, 2011.

The department now amends §7.18 to adopt by reference the substantive and other updates to the March 2012 version of the Manual issued by the NAIC during calendar year 2012. The amendments provide that these updates will be used to prepare all financial statements required to be filed with the department on or after January 1, 2013, and will be applied to all examinations of those financial statements. These amendments are necessary to ensure that all applicable examinations conducted and statements filed comply with these NAIC updates, which, combined with the March 2012 version of the Manual, effectively constitute the March 2013 version of the Manual. Furthermore, by adopting by reference the APPM requirements, including SSAPs and actuarial guidelines, most recently adopted by the NAIC, the department ensures that its accounting and actuarial requirements remain uniform with the accounting and actuarial requirements of other states. This uniformity is critical for insurers that operate in Texas and other jurisdictions because failure to adopt the most recent APPM requirements could result in these insurers being required to prepare multiple statements to comply with the updated APPM requirements in other states and the non-updated versions in Texas. This outcome would impose an unnecessary cost on these insurers and competitively disadvantage insurers domiciled in Texas.

The department also amends three existing exceptions to the Manual and makes other conforming changes to §7.18 to account for the deleted exceptions and addition of the NAIC updates. These amendments are necessary to update expired provisions in these exceptions or to delete provisions that now conform with the current SSAPs. The department provides a full description of these changes below.

The department also notes that copies of the documents adopted by reference in newly designated §7.18(c)(1) are available for inspection in the Financial Regulation Division of the Texas Department of Insurance, William P. Hobby Jr. State Office Building, Tower Number III, Third Floor, Mail Code 303-1A, 333 Guadalupe, Austin, Texas.

Amended subsection (c) provides that the adopted exceptions and modifications under this subsection must be used to prepare all financial statements required to be filed with the department on or after January 1, 2013, and will be applied to all examinations of those financial statements. This change is necessary to comply with the analogous effective dates of the NAIC updates adopted by reference in subsection (c)(1).

Amended §7.18(c)(1)(A) lists the SSAPs adopted by reference. Specifically, it adopts by reference: (i) SSAP No. 94, which adopts, with modification, *FAS 123(R): Share-Based Payment;* (ii) SSAP Nos. 92 and 102, which adopts, with modification, *FAS 158: Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans - an amendment of FASB Statements Nos. 87, 88, 106, and 132(R);* and (iii) SSAP No. 103, which adopts, with modification, *ASU 2009-16: Transfers and Servicing (Topic 860): Accounting for Transfers of Financial Assets.* SSAP No. 92 supersedes SSAP No. 14. SSAP No. 102 supersedes SSAP No. 89, and SSAP No. 103 supersedes SSAP No. 91R. SSAPs Nos. 92, 94, 102, and 103 must be used to prepare all financial statements required to be filed with the department on or after January 1, 2013 and will be applied to all examinations of those financial statements.

Amended §7.18(c)(1)(B) adopts by reference a placement revision to SSAP Nos. 40 and 77. Specifically, this placement revision nullifies SSAP No. 77 and includes the real estate guidance, related effective dates, and adopted General Accepted Accounting Principles (GAAP) references in SSAP No. 40.

Amended §7.18(c)(1)(C) adopts by reference several non-substantive revisions to the SSAPs adopted by the NAIC in calendar year 2012 that do not modify the intent of an SSAP. The SSAPs specifically addressed by these modifications include SSAP Nos. 1, 11, 26, 27, 36, 35R, 48, 57, 68, 90, 95, 97, and 101 QA - Clean and 101 QA - Tracked.

Amended §7.18(c)(1)(D) adopts by reference Actuarial Guideline 38 (AG 38) adopted by the NAIC in calendar year 2012. AG 38 sets forth reserve requirements for all universal life products that employ secondary guarantees with or without shadow account funds. This revision to AG 38 provides clarification of certain ambiguities used by sophisticated shadow fund designs, and this revision to AG 38 provides different requirements for in force business and business issued on or after January 1, 2013.

Amended §7.18(c)(2) makes several changes to existing Texas exceptions to the Manual. Specifically, this subsection redesignates current subsection (c)(2) and (3) as new §7.18(c)(2)(B) and (C), respectively, and removes unnecessary portions of these exceptions relating to property acquired before January 1, 2001, because the amortization period in these provisions has expired. Additionally, amended §7.18(c)(4) deletes existing paragraph (4) because this exception now conforms with the current SSAPs.

The amendments also make non-substantive changes to §7.18 that are necessary for the section to conform to current nomenclature, for reformatting, consistency, clarity, or editorial reasons, and to correct typographical and grammatical errors.

The public comment period for the proposed amendments to §7.18 closed on January 7, 2013. The department received no public comments on the proposed amendments.

The department adopts these amendments under the Insurance Code Chapters 32, 401, 404, 421, 425, 426, 441, 802, 823, 841, 843, 861, 862, and §36.001. Section 401.051 and §401.056 mandate that the department examine the financial condition of each carrier organized under the laws of Texas or authorized to transact the business of insurance in Texas and adopt by rule procedures for the filing and adoption of examination reports. Section 404.005(a)(2) authorizes the commissioner to establish standards for evaluating the financial condition of an insurer. Section 421.001(c) requires the commissioner to adopt each current formula recommended by the NAIC for establishing reserves for each line of insurance. Section 425.162 authorizes the commissioner to adopt rules, minimum standards, or limitations that are fair and reasonable as appropriate to supplement and implement the Insurance Code Chapter 425, Subchapter C. Section 426.002 provides that reserves required by §426.001 must be computed in accord with any rules adopted by the commissioner to adequately protect insureds, secure the solvency of the workers' compensation insurance company, and prevent unreasonably large reserves. Section 441.005 authorizes the commissioner to adopt reasonable rules as necessary to implement and supplement Chapter 441 of the Insurance Code (Supervision and Conservatorship). Section 32.041 requires the department to furnish to the companies the required financial statement forms. Section 802.001 authorizes the commissioner to obtain an accurate indication of the company's condition and method of transacting business, as necessary, to change the form of any annual statement required to be filed by any kind of insurance company. Section 823.012 authorizes the commissioner to issue rules and orders necessary to implement the provisions of Chapter 823 of the Insurance Code (relating to Insurance Holding Company Systems). Section 843.151 authorizes the commissioner to promulgate rules that are necessary and proper to implement the provisions of Chapter 843 of the Insurance Code (Health Maintenance Organizations). Section 843.155 requires HMOs to file annual reports with the commissioner, including a financial statement of the HMO, certified by an independent public accountant. Sections 841.004(b), 861.255(b), and 862.001(c) authorize the commissioner to adopt rules defining electronic machines and systems, office equipment, furniture, machines, and labor saving devices, and the maximum period for which each class may be amortized. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 22, 2013.

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Sara Waitt
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 463-6327

CHAPTER 34. STATE FIRE MARSHAL

The Texas Department of Insurance adopts amendments to 28 Texas Administrative Code Chapter 34, Subchapter E, Fire Extinguisher and Installation §§34.501, 34.504, 35.506, 34.510, 34.513, 34.514, 34.516, 34.517, 34.519, 34.520, and 34.521; Subchapter F, Fire Alarm Rules, §§34.607, 34.611, 34.613, 34.619, 34.620, 34.623, 34.628, and 34.630; Subchapter G, Fire Sprinkler Rules, §§34.701, 34.704, 34.706, 34.707, 34.712, 34.713, 34.715, 34.716, 34.721, 34.723, and 34.724; Subchapter H, Storage and Sale of Fireworks, §§34.811, 34.815, and 34.817; and Subchapter L, Fire Standard Compliant Cigarettes, §34.1203 and §34.1212. Sections 34.501, 34.504, 35.506, 34.510, 34.513, 34.514, 34.516, 34.517, 34.520, 34.521,34.607, 34.611, 34.613, 34.619, 34.620, 34.623, 34.628, 34.630, 34.701, 34.704, 34.706, 34.707, 34.712, 34.713, 34.715, 34.723, 34.724, 34.811, 34.815, 34.817, 34.1203 and 34.1212 are adopted without changes to the proposed text published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9301) and will not be republished. Sections 34.519, 34.716, and 34.721 are adopted with changes from the proposed text.

REASONED JUSTIFICATION. The amendments are necessary to make substantive changes to §§34.506, 34.519, 34.521, 34.623, 34.706, 34.721, 34.815, and 34.817 to clarify the intent of the rule or to better reflect the statutory purpose. Additionally, §§34.516, 34.715, and 34.811 are amended to conform to similar testing requirements in §34.615. The amendments also implement House Bill (HB) 1951, enacted by the 82nd Legislature, Regular Session, amending Insurance Code §6002.158. Other amendments implement portions of Senate Bill (SB) 14, enacted by the 78th Legislature, Regular Session, repealing Insurance Code Article 5.33C. The amendments also adopt certain updated National Fire Protection Association (NFPA) codes applicable to the fire alarm and fire sprinkler rules. Finally, the

amendments update numerous obsolete statutory references and make nonsubstantive editorial changes to improve readability and consistency, and conform to current agency style.

Substantive Changes

Several minor but substantive changes clarify the intent of the rule and better reflect the statutory purpose.

Amendments to §34.506(19) of the fire extinguisher rules clarify the definition of "direct supervision" so that the definition agrees with the language used in §34.517(e) of this subchapter. The word "installation" replaces "work" so that the term is less general and more applicable to the actual installation of engineered fixed fire extinguisher systems. The final sentence of the definition is amended to read: "The licensee performing the direct supervision of an engineered fixed fire extinguisher system is not required to be on-site at all times when the installation is performed."

An amendment to §34.516 adds new subsection (g) to require that any non-National Institute for Certification in Engineering Technologies (NICET) test required for a license must have been completed in the last year. An amendment to §34.715 adds new subsection (f) to require that any non-NICET test required for a license must have been completed in the last year. A similar change is made to add new §34.811(d) and also redesignates existing subsections (d) - (g) as subsections (e) - (h). These amendments ensure that the knowledge demonstrated by passing the test is current. These amendments bring the testing requirements for the fire extinguisher, fire sprinkler, and fireworks rules up to the standard for fire alarm licensure testing requirements in §34.615(e).

Amendments to §34.519 eliminate an unnecessary and redundant task. The amended section no longer requires the submission of certificates of installation to the State Fire Marshal's Office (SFMO). In Figure: 28 TAC §34.519(b) the existing installation label is deleted and replaced with an updated label. New §34.519(d) provides directions to clarify who should receive copies of the certificate of installation. Additionally, the certificate of installation in Figure: 28 TAC §34.519(c) is deleted and replaced with a new certificate to make conforming changes. Finally, a change to proposed §34.519(d)(3) is made to add a missing "to" so that the paragraph reads "(3) a copy to certifying firm to retain in their office for access by SFMO."

Clarifications to §34.521(a) are made so that a red tag is required for a portable extinguisher or fixed system where an impairment exists. This change clarifies that ignorance of impairment is not an excuse for failing to identify and properly tag an impaired fire extinguisher or fixed system. The first sentence is amended to state: "If impairments exist which make a portable extinguisher or fixed system unsafe or inoperable, the owner or the owner's representative must be notified in writing of all impairments."

An amendment to §34.611 adds language to §34.611(a)(5) so a residential fire alarm superintendent may act as a fire alarm technician. This amendment makes the section consistent with Insurance Code §6002.154(d). Another amendment deletes §34.611(f)(2) and redesignates the remainder of the paragraphs in that subsection because of redundancy with §34.611(e).

An amendment to §34.619(b) allows a local authority having jurisdiction to waive the requirement that fire alarm and detection system plans be signed and dated with an original signature. The existing section already allows a local authority having jurisdiction to waive the requirement of having plans submitted. The change allows local authorities having jurisdiction to waive the original signature requirement on submitted plans. In 2006, TDI amended §34.717(c) to make a similar change with respect to fire sprinkler system plans.

TDI adds additional language for §34.623(a) of the fire alarm rules to require yellow labels to identify systems where required inspection, testing, and maintenance services are not being performed. This change clarifies that a fire alarm and fire detection system must be both installed and maintained in compliance with applicable codes and standards. With the change, §34.623(a) states: "If, after any service, inspection or test, a system does not comply with applicable codes and standards adopted at the time the system was installed or is not being tested or maintained in accordance with those standards, a completed yellow label must be attached to the outside of the control panel cover or, if the system has no panel, in a permanent location to indicate that corrective action is necessary."

An amendment to §34.706 of the fire sprinkler rules adds a definition of "employee" and redesignates existing paragraphs (6) - (21) as paragraphs (7) - (22). The term is defined as, "An individual that performs tasks assigned by the employer. The employee's pay is subject to the deduction of social security and federal income tax. The employee may be full time, part time, or seasonal. For the purposes of this section, employees of a registered firm who are paid through a staff leasing company are considered to be employees of the registered firm." This additional definition clarifies the nature and role of an employee and is consistent with Labor Code Chapter 91.

An amendment to §34.721 clarifies that a yellow tag is appropriate if the fire protection sprinkler system is found to be noncompliant with the applicable NFPA standard at the time it was installed. The additional language adds the limiting language: "at the time it was installed," to §34.721(a). Additionally, a nonsubstantive change is made by inserting "found" to the proposed language to improve readability as a result of the change to §34.721(a). The sentence now reads: "If a fire protection sprinkler system is found to be noncompliant with the applicable NFPA standards at the time it was installed or found to contain equipment that has been recalled by the manufacturer, but the noncompliance or recalled equipment does not constitute an emergency condition, a completed yellow tag must be attached to the respective riser of each system to permit convenient inspection, to not hamper the system's actuation or operation, and also to indicate that corrective action is necessary." The yellow tag in Figure: 28 TAC §34.721(g) is deleted and replaced with a tag containing instructions that more closely mirror the text of §34.721(a). Additionally, the new figure updates the inspection dates.

Two new paragraphs are added to §34.815(b). The first addition is to move the language in §34.817(q) regarding sales tax permit requirements to a more appropriate location in the rules. The second addition clarifies that retail permits cannot be sold to a non-retailer. Resale of a retail permit to a non-retailer would otherwise allow the purchase of fireworks year round in violation of Occupations Code Chapter 2154.

A change is made to §34.817(f) to address the appropriate storage of fireworks. The language, "Fireworks must not be sold or stored for future sale at any inhabited dwelling, house, apartment, or other structure used in whole or in part as a home or place of abode by any person or persons," is added to §34.817(f) to ensure the protection, safety, and preservation of life and prop-

erty. Additionally, in connection with the new §34.815(b)(5) regarding sales tax permits, §34.817(q) is deleted.

Update Minimum Standards

Amendments to §34.607 update four applicable NFPA code standards. In Subchapter F, Fire Alarm Rules, amendments to §34.607 update the adopted NFPA standards for NFPA 11, Standard for Low-, Medium-, and High-Expansion Foam; NFPA 13, Standard for the Installation of Sprinkler Systems; NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes; and NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height. These four amendments ensure that Texas code standards are brought up to the 2010 versions of the NFPA codes. Amending these NFPA standards makes the applicable standards for the fire alarm rules consistent with those already adopted in §34.707 for the fire sprinkler rules.

NFPA 11-2010, Standard for Low-, Medium-, and High-Expansion Foam and Combined Agent Systems, incorporates requirements previously found in NFPA 11A, Standard for Medium- and High-Expansion Foam and adds a new chapter to address compressed air foam systems. The updated standard revises some chapters to accommodate the incorporation of medium- and high-expansion foam systems previously regulated by NFPA 11A.

NFPA 13-2010, Standard for the Installation of Sprinkler Systems, adds definitions relating to private water supply terms; clarifies the requirements of Ordinary Hazard Group 1 and Group 2 Occupancies where storage is present; revises requirements relating to trapeze hangers and bracing criteria; re-organizes the requirements relating to storage according to storage size, type, material, and commodity; specifies new requirements for listed expansion chambers; clarifies ceiling pocket rules; and clarifies the formulas used in calculating large antifreeze systems.

NFPA 13D-2010, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, includes new spacing and obstruction rules addressing sloped ceilings, ceiling pockets, ceiling fans, and kitchen cabinets; specifies installation, design, and acceptance requirements for pumps; clarifies the acceptability of insulation as a method of freeze protection and the acceptability of wells as a water source; specifies new requirements for listed dry pipe or preaction residential sprinkler systems, as well as clarifies requirements for multipurpose combined and networked sprinkler systems; and adopts specific obstruction rules for residential sprinklers.

NFPA 13R-2010, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height; includes spacing and obstruction rules addressing sloped ceilings, ceiling pockets, ceiling fans, and kitchen cabinets; clarifies the requirements for utilizing quick-response sprinklers within NFPA 13R regulations; adds new requirements addressing architectural features within dwelling units; and clarifies the requirements covering closets, including obstructions within closets and protection of mechanical closets.

An amendment to §34.707 updates the NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection. Revised NFPA 20-2010, Standard for the Installation of Stationary Pumps for Fire Protection, updates the standard to conform with the latest edition of the Manual of Style for NFPA Technical Committee Documents; adds provisions addressing the use of fire pump drivers using variable speed pressure limiting control; adds acceptance test criteria for replacement of critical path components of a fire pump installation; refines requirements for variable speed drives; adds requirements for break tanks and component replacement testing tables; and adds requirements on fire pumps for high-rise buildings and for pumps arranged in series.

Copies of the standards are available for public inspection in the SFMO. The NFPA also makes available codes for read-only inspection online through their website at www.nfpa.org. To view the NFPA codes on the NFPA website, users must create a free account and agree to certain terms and conditions.

Nonsubstantive Amendments

The rule updates numerous obsolete statutory references. These changes are nonsubstantive and are made to reflect the Texas Legislature's recodification of the Insurance Code. Article 5.43-1 was repealed and recodified as Insurance Code Chapter 6001 in HB 2636, 80th Legislature, Regular Session, 2007.

Portions of Article 5.43-2 were repealed and recodified as Insurance Code Chapter 6002 contained in HB 2636,. The remaining portions of Article 5.43-2, including changes made by HB 2118, 80th Legislature, Regular Session, 2007, relating to the new licensing category of residential fire alarm technicians, were repealed and recodified as Insurance Code Chapter 6002 in the nonsubstantive Insurance Code revision contained in SB 1969, 81st Legislature, Regular Session, 2009. Article 5.43-3 was repealed and recodified as Insurance Code Chapter 6003 in the Insurance Code revision contained in HB 2636. The affected sections are §§34.501, 34.504, 34.510, 34.513, 34.514, 34.516, 34.517, 34.613, 34.620, Figure: 28 TAC §34.620(g), 34.701, 34.704, 34.706, 34.712, 34.713, 34.715, 34.716, 34.723, and 34.724. Finally, §34.713(b)(2)(A) is amended so that the language tracks the changed NICET terminology which has replaced "fire protection automatic sprinkler" with "water-based fire protection."

The Business and Commerce Code Chapter 36, which codified the Assumed Business or Professional Name Act, was repealed in the nonsubstantive Business and Commerce Code revision, Acts 2007, 80th Legislature, Chapter 885, §2.47. The Business and Commerce Code Chapter 36 was re-adopted as the Business and Commerce Code Chapter 71 in the same nonsubstantive Business and Commerce Code revision. The affected sections are §34.514 and §34.713.

The service tag in Figure: 28 TAC §34.520(g) is deleted and replaced with a new tag that updates the part of the tag showing the date of last service.

The adopted rules also make numerous nonsubstantive editorial changes to reflect agency style and improve readability. These changes replace "shall" with "must" or "will" and amend inconsistent capitalization.

The amended rules also update obsolete web addresses in §§34.630, 34.1203, and 34.1212.

The adopted rules make a change to §34.716. The former §34.716(g), now renumbered 34.716(f) is changed to replace "therein" with "by the firm" to reflect agency style and improve readability.

HB 1951 - 28 TAC §34.628 and §34.630.

Section 34.630 is changed so that subsection (f) refers to Renewal Application for Training School Approval form, and deletes the form number, consistent with new agency style.

Article 15 of HB 1951 amended Insurance Code §6002.158, related to residential fire alarm technicians. The amendment reduced the curriculum requirement for the residential fire alarm technician course from eight to seven hours. An amendment to §34.628 makes the corresponding change to the rule that implements §6002.158.

SB 14 - 28 TAC §34.716(f).

What is now §34.716(f) was adopted in 1996 to implement Art. 5.33C, in (21 TexReg 7663). In 2003, SB 14 repealed Insurance Code Articles 5.33A and 5.33C, providing for certificates used for premium credits and discounts on insurance rates. Section 34.716 was formerly 37 TAC §541.14. Section 34.716(f) is obsolete and deleted.

The adopted rules amend §34.1212 to delete form numbers from the Certification by Manufacturer for Fire Standard Compliant Cigarette (FSCC) and Application for Fire Standard Compliant Cigarette Marking Approval forms, consistent with agency style.

None of the changes made to the proposed text materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

HOW THE SECTIONS WILL FUNCTION.

Section 34.501 provides the purpose of the Fire Extinguisher Rules subchapter. The change to this section updates the Insurance Code citation.

Section 34.504 proves the exceptions to the subchapter. The change to this section updates the Insurance Code citation.

Section 34.506 provides the definitions applicable to the subchapter. A nonsubstantive word change is made to delete the word "shall." Additionally, the definition of "direct supervision" is changed so that the definition agrees with the language used in §34.517(e) of this subchapter.

Section 34.510 provides requirements for certificates of registration. Nonsubstantive editorial changes reflect agency style and improve readability. Changes update obsolete statutory references.

Section 34.513 specifies the consequences of alternations of certificates, licenses, or permits. Nonsubstantive editorial changes reflect agency style and improve readability. Changes update obsolete statutory references.

Section 34.514 establishes the applications requirements. Nonsubstantive editorial changes reflect agency style and improve readability. Changes update obsolete statutory references.

Section 34.516 specifies the test requirements. Nonsubstantive editorial changes are made to reflect agency style and improve readability. Changes update obsolete statutory references. Additionally, changes to the section add a requirement that any non-NICET test required for a license must have been completed in the last year to conform with similar testing requirements in §34.615.

Section 34.517 specifies the fire extinguisher system installation and service requirements. Nonsubstantive editorial changes reflect agency style and improve readability. Changes update obsolete statutory references.

Section 34.519 establishes the requirements for installation labels for fixed extinguisher systems. Nonsubstantive editorial changes reflect agency style and improve readability. The amended section no longer requires the submission of certificates of installation to the SFMO. New Figure: 28 TAC §34.519(b) updates the required label. New §34.519(d) clarifies the directions on who should receive copies of the certificate of installation. Conforming changes are made to the certificate of installation in Figure: 28 TAC §34.519(c).

Section 34.520 provides the required service tag. The tag itself in Figure: 28 TAC §34.520(g) is updated.

Section 34.521 provides the required red tag. Nonsubstantive editorial changes are made to reflect agency style and improve readability.

Section 34.607 adopts the applicable standards for the fire alarm rules. Four of the NFPA standards are updated to more current editions. Nonsubstantive editorial changes reflect agency style and improve readability.

Section 34.611 specifies the requirements for licenses and approvals. The changes add language to §34.611(a)(5) so a residential fire alarm superintendent may act as a fire alarm technician. Another amendment deletes §34.611(f)(2) and redesignates the remainder of the paragraphs in that subsection because of redundancy with §34.611(e). Nonsubstantive editorial changes reflect agency style and improve readability.

Section 34.613 establishes the applications requirements for the subchapter. Nonsubstantive editorial changes reflect agency style and improve readability. Changes update obsolete statutory references.

Section 34.619 contains the requirements for fire alarm and detection system plans and drawings. The amendment allows local authorities having jurisdiction to waive the original signature requirement on submitted plans.

Section 34.620 provides the installation label requirements. Nonsubstantive editorial changes reflect agency style and improve readability. Changes update obsolete statutory references. Nonsubstantive changes to Figure: 28 TAC §34.620(g) are adopted.

Section 34.623 provides the required yellow labels. An amendment adds language to require yellow labels to identify systems where required inspection, testing, and maintenance services are not being performed.

Section 34.628 establishes the requirements for a residential fire alarm technician training course. Nonsubstantive editorial changes reflect agency style and improve readability. Changes to the section reflect recent amendments to Insurance Code §6002.158.

Section 34.630 adopts the application and renewal forms. Nonsubstantive editorial changes are made to reflect agency style, improve readability, and update the web address.

Section 34.701 provides the purpose for the fire sprinkler rules. Nonsubstantive editorial changes reflect agency style and improve readability. Changes update obsolete statutory references.

Section 34.704 specifies the exception applicable to the subchapter. Changes update obsolete statutory references.

Section 34.706 provides the definitions applicable to the subchapter. A definition of "employee" is added. Nonsubstantive editorial changes reflect agency style and improve readability.

Section 34.707 adopts the standards applicable to the fire sprinkler rules. NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, is updated to the 2012 edition. Nonsubstantive editorial changes reflect agency style and improve readability.

Section 34.712 specifies the consequences of altering certificates or licenses. An obsolete statutory reference is corrected.

Section 34.713 provides the application requirements. Nonsubstantive editorial changes reflect agency style and improve readability. Changes update obsolete statutory references.

Section 34.715 specifies the testing requirements. A change to the section adds a requirement that any non-NICET test required for a license must have been completed in the last year to conform with similar testing requirements in §34.615. Nonsubstantive editorial changes reflect agency style and improve readability. Changes update obsolete statutory references.

Section 34.716 establishes requirements for installation, maintenance and service. Subsection (f) is obsolete and deleted. Nonsubstantive editorial changes reflect agency style and improve readability. Changes update obsolete statutory references.

Section 34.721 specifies the required yellow tag. Changes to the section clarify that a yellow tag is appropriate if the fire protection sprinkler system is found to be noncompliant with the applicable NFPA standard at the time it was installed. The yellow tag in Figure: 28 TAC §34.721(g) is deleted and replaced with a tag containing instructions that more closely mirror the text of §34.721(a). Additionally, the new Figure: 28 TAC §34.721(g) updates the inspection dates.

Section 34.723 establishes how the subchapter will be enforced. Nonsubstantive editorial changes reflect agency style and improve readability. Changes update obsolete statutory references.

Section 34.724 establishes the potential administrative actions for failure to comply with the subchapter. Nonsubstantive editorial changes reflect agency style and improve readability. Changes update obsolete statutory references.

Section 34.811 specifies the requirements for pyrotechnic operator licenses, pyrotechnic special effects operations licenses, and flame effects operation licenses. Changes to the section add a requirement that any non-NICET test required for a license must have been completed in the last year to conform with similar testing requirements in §34.615. Nonsubstantive editorial changes are made to reflect agency style and improve readability.

Section 34.815 establishes requirements for fireworks retail permits. Two new paragraphs are added. The first paragraph adds language from §34.817(q) regarding sales tax permit requirements to a more appropriate location in the rules. The second new paragraph clarifies that retail permits cannot be sold along with fireworks to a non-retailer. Nonsubstantive editorial changes are made to reflect agency style and improve readability.

Section 34.817 establishes retail sales general requirements. The language "Fireworks may not be sold or stored for future sale at any inhabited dwelling, house, apartment, or other structure used in whole or in part as a home or place of abode by any person or persons" is added to §34.817(f). The subsection regarding sales tax permit requirements is moved to a more appropriate location in the rules, at §34.815.

Section 34.1203 sets forth the general provisions regarding required and voluntary submissions of fire safe cigarettes. Nonsubstantive editorial changes reflect agency style and improve readability. The web address is updated to reflect the agency's new domain name.

Section 34.1212 promulgates certification forms and marking applications. Nonsubstantive editorial changes reflect agency style and improve readability. The web address is updated to reflect the agency's new domain name.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI did not receive any comments on the published proposal.

SUBCHAPTER E. FIRE EXTINGUISHER AND INSTALLATION

28 TAC §§34.501, 34.504, 34.506, 34.510, 34.513, 34.514, 34.516, 34.517, 34.519 - 34.521

STATUTORY AUTHORITY. The amendments are adopted pursuant to Government Code §417.004 and §417.005; Insurance Code §§6001.051, 6001.052, 6002.051, 6002.052, 6003.051, 6003.052, 6003.054, and §36.001; Occupations Code §2154.051 and §2154.052; and Health and Safety Code §796.008. Government Code §417.004 specifies that the commissioner of insurance shall perform the rulemaking functions previously performed by the Texas Commission on Fire Protection. Government Code §417.005 specifies that the commissioner of insurance may, after consulting with the state fire marshal, adopt necessary rules to guide the state fire marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the commissioner of insurance.

Insurance Code §6001.051(a) specifies that the department shall administer Insurance Code Chapter 6001. Insurance Code §6001.051(b) specifies that the commissioner may issue rules the commissioner considers necessary to administer Chapter 6001 through the state fire marshal. Insurance Code §6001.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards published by the National Fire Protection Association; recognized by federal law or regulation; published by any nationally recognized standards-making organization; or contained in the manufacturer's installation manuals. Insurance Code §6001.052(b) specifies that the commissioner shall adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding: (i) registration of firms engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems or hydrostatic testing of fire extinguisher cylinders; (ii) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (iii) requirements for installing or servicing portable fire extinguishers and planning, certifying, installing, or servicing fixed fire extinguisher systems. Insurance Code §6001.052(c) specifies that the commissioner by rule shall prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under this chapter.

Insurance Code §6002.051(a) specifies that the department shall administer Chapter 6002. Insurance Code §6002.051(b) specifies that the commissioner may adopt rules as necessary

to administer Chapter 6002, including rules the commissioner considers necessary to administer Chapter 6002 through the state fire marshal. Insurance Code §6002.052(a) specifies that in adopting necessary rules, the commissioner may use: (i) recognized standards, such as, but not limited to standards of the National Fire Protection Association; standards recognized by federal law or regulation; or standards published by a nationally recognized standards-making organization; (ii) the National Electrical Code; or (iii) information provided by individual manufacturers. Insurance Code §6002.052(b) specifies that rules adopted under §6002.051 may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems, and that the rules must establish appropriate training and qualification standards for each kind of license and certificate. Insurance Code §6002.052(c) specifies that the commissioner shall also adopt standards applicable to fire alarm devices, equipment, or systems regulated under this chapter; and that in adopting standards, the commissioner may allow the operation of a fire alarm monitoring station that relies on fire alarm devices or equipment approved or listed by a nationally recognized testing laboratory without regard to whether the monitoring station is approved or listed by a nationally recognized testing laboratory if the operator of the station demonstrates that the station operating standards are substantially equivalent to those required to be approved or listed.

Insurance Code §6003.051(a) specifies that the department shall administer Chapter 6003. Insurance Code §6003.051(b) specifies that the commissioner may issue rules necessary to administer Chapter 6003 through the state fire marshal. Insurance Code §6003.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards adopted by federal law or regulation; standards published by a nationally recognized standards-making organization; or standards developed by individual manufacturers. Section 6003.054(a) further specifies that the state fire marshal shall implement the rules adopted by the commissioner for the protection and preservation of life and property in controlling: (i) the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and (ii) the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems by determining the criteria and qualifications for registration certificate and license holders; evaluating the qualifications of an applicant for a registration certificate to engage in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; conducting examinations and evaluating the qualifications of a license applicant; and issuing registration certificates and licenses to qualified applicants.

Occupations Code §2154.051 states that the commissioner shall determine reasonable criteria and qualifications for licenses and permits pertaining to the regulation of fireworks and fireworks displays. Section 2154.052 provides that the commissioner shall adopt and the state fire marshal shall administer rules the commissioner considers necessary for the protection, safety, and preservation of life and property. Under §2154.052(e), a rule may not be adopted under Occupations Code Chapter 2154 that is more restrictive than a rule in effect on September 1, 1998, without specific statutory authority.

Health and Safety Code §796.008 states that the state fire marshal may adopt rules to administer the cigarette fire safety standards chapter.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§34.519. Installation Labels for Fixed Extinguisher Systems.

(a) After an installation has been completed, an installation label must be affixed to the control head or panel of the fixed fire extinguisher system. The signature of the licensee on the label certifies that the system has been installed according to law. Labels must be five inches in height and four inches in width and must be of the gum label type. They must not be red in color. Installation labels must contain only the following information in the format of the label shown in subsection (b) of this section:

(1) the inscription "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL--SYSTEM INSTALLATION RECORD" (all in capital letters, at least 10-point boldface type);

(2) the firm's name, address, and telephone number;

(3) the firm's certificate-of-registration number;

(4) the signature and license number of the licensee authorized to certify a fixed fire extinguishing system (a stamped signature is prohibited);

(5) the date of installation; and

(6) identification of the manufacturer's manual(s) used for installation.

(b) Installation label:
Figure: 28 TAC §34.519(b)

(c) Certificate of Installation.
Figure: 28 TAC §34.519(c)

(d) After completion of the installation, modification, or addition of a fixed fire extinguisher system, the licensee must complete an installation certificate in the format provided by the state fire marshal (see Certificate of Installation). When an installation certificate has been completed, legible copies must be distributed as follows:

(1) original to owner or posted on site at control head or panel;

(2) a copy to main authority having jurisdiction, if required; and

(3) a copy to certifying firm to retain in their office for access by SFMO.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300248
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: February 14, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 463-6327

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SUBCHAPTER F. FIRE ALARM RULES

28 TAC §§34.607, 34.611, 34.613, 34.619, 34.620, 34.623, 34.628, 34.630

STATUTORY AUTHORITY. The amendments are adopted pursuant to Government Code §417.004 and §417.005; Insurance Code §§6001.051, 6001.052, 6002.051, 6002.052, 6003.051, 6003.052, 6003.054, and §36.001; Occupations Code §2154.051 and §2154.052; and Health and Safety Code §796.008. Government Code §417.004 specifies that the commissioner of insurance shall perform the rulemaking functions previously performed by the Texas Commission on Fire Protection. Government Code §417.005 specifies that the commissioner of insurance may, after consulting with the state fire marshal, adopt necessary rules to guide the state fire marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the commissioner of insurance.

Insurance Code §6001.051(a) specifies that the department shall administer Insurance Code Chapter 6001. Insurance Code §6001.051(b) specifies that the commissioner may issue rules the commissioner considers necessary to administer Chapter 6001 through the state fire marshal. Insurance Code §6001.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards published by the National Fire Protection Association; recognized by federal law or regulation; published by any nationally recognized standards-making organization; or contained in the manufacturer's installation manuals. Insurance Code §6001.052(b) specifies that the commissioner shall adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding: (i) registration of firms engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems or hydrostatic testing of fire extinguisher cylinders; (ii) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (iii) requirements for installing or servicing portable fire extinguishers and planning, certifying, installing, or servicing fixed fire extinguisher systems. Insurance Code §6001.052(c) specifies that the commissioner by rule shall prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under this chapter.

Insurance Code §6002.051(a) specifies that the department shall administer Chapter 6002. Insurance Code §6002.051(b) specifies that the commissioner may adopt rules as necessary to administer Chapter 6002, including rules the commissioner considers necessary to administer Chapter 6002 through the state fire marshal. Insurance Code §6002.052(a) specifies that in adopting necessary rules, the commissioner may use: (i) recognized standards, such as, but not limited to standards of the National Fire Protection Association; standards recognized by federal law or regulation; or standards published by a nationally recognized standards-making organization; (ii) the National Electrical Code; or (iii) information provided by individual manufacturers. Insurance Code §6002.052(b) specifies that rules adopted under §6002.051 may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems, and that the rules must establish appropriate training and qualification standards for each kind of license and certificate. Insurance Code §6002.052(c) specifies that the commissioner shall also adopt standards applicable to fire alarm devices, equipment, or systems regulated under this chapter; and that in adopting standards, the commissioner may allow the operation of a fire alarm monitoring station that relies on fire alarm devices or equipment approved or listed by a nationally recognized testing laboratory without regard to whether the monitoring station is approved or listed by a nationally recognized testing laboratory if the operator of the station demonstrates that the station operating standards are substantially equivalent to those required to be approved or listed.

Insurance Code §6003.051(a) specifies that the department shall administer Chapter 6003. Insurance Code §6003.051(b) specifies that the commissioner may issue rules necessary to administer Chapter 6003 through the state fire marshal. Insurance Code §6003.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards adopted by federal law or regulation; standards published by a nationally recognized standards-making organization; or standards developed by individual manufacturers. Section 6003.054(a) further specifies that the state fire marshal shall implement the rules adopted by the commissioner for the protection and preservation of life and property in controlling: (i) the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and (ii) the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems by determining the criteria and qualifications for registration certificate and license holders; evaluating the qualifications of an applicant for a registration certificate to engage in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; conducting examinations and evaluating the qualifications of a license applicant; and issuing registration certificates and licenses to qualified applicants.

Occupations Code §2154.051 states that the commissioner shall determine reasonable criteria and qualifications for licenses and permits pertaining to the regulation of fireworks and fireworks displays. Section 2154.052 provides that the commissioner shall adopt and the state fire marshal shall administer rules the commissioner considers necessary for the protection, safety, and preservation of life and property. Under §2154.052(e), a rule may not be adopted under Occupations Code Chapter 2154 that is more restrictive than a rule in effect on September 1, 1998, without specific statutory authority.

Health and Safety Code §796.008 states that the state fire marshal may adopt rules to administer the cigarette fire safety standards chapter.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: February 14, 2013
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For further information, please call: (512) 463-6327

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SUBCHAPTER G. FIRE SPRINKLER RULES

28 TAC §§34.701, 34.704, 34.706, 34.707, 34.712, 34.713, 34.715, 34.716, 34.721, 34.723, 34.724

STATUTORY AUTHORITY. The amendments are adopted pursuant to Government Code §417.004 and §417.005; Insurance Code §§6001.051, 6001.052, 6002.051, 6002.052, 6003.051, 6003.052, 6003.054, and §36.001; Occupations Code §2154.051 and §2154.052; and Health and Safety Code §796.008. Government Code §417.004 specifies that the commissioner of insurance shall perform the rulemaking functions previously performed by the Texas Commission on Fire Protection. Government Code §417.005 specifies that the commissioner of insurance may, after consulting with the state fire marshal, adopt necessary rules to guide the state fire marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the commissioner of insurance.

Insurance Code §6001.051(a) specifies that the department shall administer Insurance Code Chapter 6001. Insurance Code §6001.051(b) specifies that the commissioner may issue rules the commissioner considers necessary to administer Chapter 6001 through the state fire marshal. Insurance Code §6001.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards published by the National Fire Protection Association; recognized by federal law or regulation; published by any nationally recognized standards-making organization; or contained in the manufacturer's installation manuals. Insurance Code §6001.052(b) specifies that the commissioner shall adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding: (i) registration of firms engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems or hydrostatic testing of fire extinguisher cylinders; (ii) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (iii) requirements for installing or servicing portable fire extinguishers and planning, certifying, installing, or servicing fixed fire extinguisher systems. Insurance Code §6001.052(c) specifies that the commissioner by rule shall prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under this chapter.

Insurance Code §6002.051(a) specifies that the department shall administer Chapter 6002. Insurance Code §6002.051(b) specifies that the commissioner may adopt rules as necessary to administer Chapter 6002, including rules the commissioner considers necessary to administer Chapter 6002 through the state fire marshal. Insurance Code §6002.052(a) specifies that in adopting necessary rules, the commissioner may use: (i) recognized standards, such as, but not limited to standards of the National Fire Protection Association; standards recognized by federal law or regulation; or standards published by a nationally recognized standards-making organization; (ii) the National Electrical Code; or (iii) information provided by individual manufacturers. Insurance Code §6002.052(b) specifies that rules adopted under §6002.051 may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems, and that the rules must establish appropriate training and qualification standards for each kind of license and certificate. Insurance Code §6002.052(c) specifies that the commissioner shall also adopt standards applicable to fire alarm devices, equipment, or systems regulated under this chapter; and that in adopting standards, the commissioner may allow the operation of a fire alarm monitoring station that relies on fire alarm devices or equipment approved or listed by a nationally recognized testing laboratory without regard to whether the monitoring station is approved or listed by a nationally recognized testing laboratory if the operator of the station demonstrates that the station operating standards are substantially equivalent to those required to be approved or listed.

Insurance Code §6003.051(a) specifies that the department shall administer Chapter 6003. Insurance Code §6003.051(b) specifies that the commissioner may issue rules necessary to administer Chapter 6003 through the state fire marshal. Insurance Code §6003.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards adopted by federal law or regulation; standards published by a nationally recognized standards-making organization; or standards developed by individual manufacturers. Section 6003.054(a) further specifies that the state fire marshal shall implement the rules adopted by the commissioner for the protection and preservation of life and property in controlling: (i) the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and (ii) the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems by determining the criteria and qualifications for registration certificate and license holders; evaluating the qualifications of an applicant for a registration certificate to engage in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; conducting examinations and evaluating the qualifications of a license applicant; and issuing registration certificates and licenses to qualified applicants.

Occupations Code §2154.051 states that the commissioner shall determine reasonable criteria and qualifications for licenses and permits pertaining to the regulation of fireworks and fireworks displays. Section 2154.052 provides that the commissioner shall adopt and the state fire marshal shall administer rules the commissioner considers necessary for the protection, safety, and preservation of life and property. Under §2154.052(e), a rule may not be adopted under Occupations Code Chapter 2154 that is more restrictive than a rule in effect on September 1, 1998, without specific statutory authority.

Health and Safety Code §796.008 states that the state fire marshal may adopt rules to administer the cigarette fire safety standards chapter.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§34.716. Installation, Maintenance, and Service.

(a) All fire protection sprinkler systems installed under Insurance Code Chapter 6003 must be installed under the supervision of the appropriate licensed responsible managing employee.

(1) An "RME-General" may supervise the installation of any fire protection sprinkler system including one- and two-family dwellings.

(2) An "RME-Dwelling" may only supervise the installation of a fire protection sprinkler system in one- and two-family dwellings.

(3) An "RME-Underground Fire Main" may only supervise the installation of an assembly of underground piping or conduits, that conveys water with or without other agents, used as an integral part of any type of fire protection sprinkler system.

(b) Upon completion of the installation, the licensed responsible managing employee must have affixed a contractor's material and test certificate for aboveground and/or underground piping on or near the system riser. If the adopted installation standard does not require testing, all other sections except the testing portion of the contractor's material and test certificate must still be completed. The contractor's material and test certificate must be obtained from the State Fire Marshal's Office. The certificate must be distributed as follows:

(1) original copy kept at the site after completion of the installation;

(2) second copy retained by the installing company at its place of business in a separate file used exclusively by that firm to retain all "Contractor's Material and Test Certificates." The certificates must be available for examination by the state fire marshal or the state fire marshal's representative upon request. The certificates must be retained for the life of the system; and

(3) third copy to be sent to the local authority having jurisdiction within 10 days after completion of the installation.

(c) Service, maintenance, or testing, when conducted by someone other than an owner, must be conducted by a registered firm and in compliance with the appropriate adopted standards. After January 1, 2009, the inspection, test and maintenance service of a fire protection sprinkler system, except a one- and two-family dwelling or an underground fire main, must be performed by an individual holding a current RME-General Inspector or RME-General license. A visual inspection not accompanied by service, maintenance, testing, or certification does not require a certificate of registration.

(d) Complete records must be kept of all service, maintenance, testing, and certification operations of the firm. The records must be available for examination by the state fire marshal or the state fire marshal's representative.

(e) All vehicles used in service, maintenance, testing, or certification activities must prominently display the company name, telephone number, and certificate of registration number. The numbers and letters must be at least two inches in height and must be permanently affixed or magnetically attached to a side panel or front door panel in a color contrasting with the background color of the vehicle. The certificate of registration number must be designated as: Texas Fire Sprinkler Registration (number) or it may be abbreviated to Tex: SCR (number).

(f) Each registered firm must employ at least one full-time RME-General or RME-Dwelling licensee at each business office where fire protection sprinkler system planning is performed, who is appropriately licensed to conduct the business performed by the firm.

(g) The planning of an automatic fire protection sprinkler system must be performed under the direct supervision of the appropriately licensed RME.

(h) The planning, installation, or service of a fire protection sprinkler system must be in accord with the minimum requirements of the applicable adopted standards in §34.707 of this title (relating to Adopted Standards) except when the plan, installation or service complies with a more recent edition of the standard that has been adopted by the political subdivision in which the system is installed.

§34.721. Yellow Tags.

(a) If a fire protection sprinkler system is found to be noncompliant with the applicable NFPA standards at the time it was installed or found to contain equipment that has been recalled by the manufacturer, but the noncompliance or recalled equipment does not constitute an emergency condition, a completed yellow tag must be attached to the respective riser of each system to permit convenient inspection, to not hamper the system's actuation or operation, and also to indicate that corrective action is necessary.

(b) The signature of the service person on a yellow tag certifies the impairments listed on the tag cause the system to be out of compliance with NFPA standards.

(c) After attaching a yellow tag, the inspector must notify the building owner or the building owner's representative and the authority having jurisdiction in writing of all impairments. The notification must be postmarked, e-mailed, faxed or hand delivered within five business days of the attachment of the yellow tag.

(d) A yellow tag may only be removed by a licensed employee of a registered firm or an authorized representative of a governmental agency with appropriate regulatory authority after the employee or representative completes and attaches a service tag that indicates the impaired conditions were corrected.

(e) Yellow tags may be printed for a multiple period of years.

(f) Yellow tags must be the same size as service tags, and must contain the following information in the format of the tag as set forth in subsection (g) of this section:

(1) "DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL" (all capital letters, at least 10-point boldface type);

(2) firm's name, address and phone number;

(3) firm's certificate of registration number;

(4) license number of RME;

(5) printed name of service person or inspector;

(6) signature of service person or inspector;

(7) day, month, and year (to be punched);

(8) name and address of owner or occupant;

(9) building number, location or system number; and

(10) list of impairments not compliant with NFPA standards.

(g) Sample yellow tag:

Figure: 28 TAC §34.721(g)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300250
Sara Waitt
General Counsel
Texas Department of Insurance
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Proposal publication date: November 23, 2012
For further information, please call: (512) 463-6327

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SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS

28 TAC §§34.811, 34.815, 34.817

STATUTORY AUTHORITY. The amendments are adopted pursuant to Government Code §417.004 and §417.005; Insurance Code §§6001.051, 6001.052, 6002.051, 6002.052, 6003.051, 6003.052, 6003.054, and §36.001; Occupations Code §2154.051 and §2154.052; and Health and Safety Code §796.008. Government Code §417.004 specifies that the commissioner of insurance shall perform the rulemaking functions previously performed by the Texas Commission on Fire Protection. Government Code §417.005 specifies that the commissioner of insurance may, after consulting with the state fire marshal, adopt necessary rules to guide the state fire marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the commissioner of insurance.

Insurance Code §6001.051(a) specifies that the department shall administer Insurance Code Chapter 6001. Insurance Code §6001.051(b) specifies that the commissioner may issue rules the commissioner considers necessary to administer Chapter 6001 through the state fire marshal. Insurance Code §6001.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards published by the National Fire Protection Association; recognized by federal law or regulation; published by any nationally recognized standards-making organization; or contained in the manufacturer's installation manuals. Insurance Code §6001.052(b) specifies that the commissioner shall adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding: (i) registration of firms engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems or hydrostatic testing of fire extinguisher cylinders; (ii) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (iii) requirements for installing or servicing portable fire extinguishers and planning, certifying, installing, or servicing fixed fire extinguisher systems. Insurance Code §6001.052(c) specifies that the commissioner by rule shall prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under this chapter.

Insurance Code §6002.051(a) specifies that the department shall administer Chapter 6002. Insurance Code §6002.051(b) specifies that the commissioner may adopt rules as necessary to administer Chapter 6002, including rules the commissioner considers necessary to administer Chapter 6002 through the state fire marshal. Insurance Code §6002.052(a) specifies that in adopting necessary rules, the commissioner may use: (i) recognized standards, such as, but not limited to standards of the National Fire Protection Association; standards recognized by federal law or regulation; or standards published by a nationally recognized standards-making organization; (ii) the National Electrical Code; or (iii) information provided by individual manufacturers. Insurance Code §6002.052(b) specifies that rules adopted under §6002.051 may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems, and that the rules must establish appropriate training and qualification standards for each kind of license and certificate. Insurance Code §6002.052(c) specifies that the commissioner shall also adopt standards applicable to fire alarm devices, equipment, or systems regulated under this chapter; and that in adopting standards, the commissioner may allow the operation of a fire alarm monitoring station that relies on fire alarm devices or equipment approved or listed by a nationally recognized testing laboratory without regard to whether the monitoring station is approved or listed by a nationally recognized testing laboratory if the operator of the station demonstrates that the station operating standards are substantially equivalent to those required to be approved or listed.

Insurance Code §6003.051(a) specifies that the department shall administer Chapter 6003. Insurance Code §6003.051(b) specifies that the commissioner may issue rules necessary to administer Chapter 6003 through the state fire marshal. Insurance Code §6003.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards adopted by federal law or regulation; standards published by a nationally recognized standards-making organization; or standards developed by individual manufacturers. Section 6003.054(a) further specifies that the state fire marshal shall implement the rules adopted by the commissioner for the protection and preservation of life and property in controlling: (i) the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and (ii) the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems by determining the criteria and qualifications for registration certificate and license holders; evaluating the qualifications of an applicant for a registration certificate to engage in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; conducting examinations and evaluating the qualifications of a license applicant; and issuing registration certificates and licenses to qualified applicants.

Occupations Code §2154.051 states that the commissioner shall determine reasonable criteria and qualifications for licenses and permits pertaining to the regulation of fireworks and fireworks displays. Section 2154.052 provides that the commissioner shall adopt and the state fire marshal shall administer rules the commissioner considers necessary for the protection, safety, and preservation of life and property. Under §2154.052(e), a rule may not be adopted under Occupations Code Chapter 2154 that is more restrictive than a rule in effect on September 1, 1998, without specific statutory authority.

Health and Safety Code §796.008 states that the state fire marshal may adopt rules to administer the cigarette fire safety standards chapter.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300251
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: February 14, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 463-6327

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SUBCHAPTER L. FIRE STANDARD COMPLIANT CIGARETTES

28 TAC §34.1203, §34.1212

STATUTORY AUTHORITY. The amendments are adopted pursuant to Government Code §417.004 and §417.005; Insurance Code §§6001.051, 6001.052, 6002.051, 6002.052, 6003.051, 6003.052, 6003.054, and §36.001; Occupations Code §2154.051 and §2154.052; and Health and Safety Code §796.008. Government Code §417.004 specifies that the commissioner of insurance shall perform the rulemaking functions previously performed by the Texas Commission on Fire Protection. Government Code §417.005 specifies that the commissioner of insurance may, after consulting with the state fire marshal, adopt necessary rules to guide the state fire marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the commissioner of insurance.

Insurance Code §6001.051(a) specifies that the department shall administer Insurance Code Chapter 6001. Insurance Code §6001.051(b) specifies that the commissioner may issue rules the commissioner considers necessary to administer Chapter 6001 through the state fire marshal. Insurance Code §6001.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards published by the National Fire Protection Association; recognized by federal law or regulation; published by any nationally recognized standards-making organization; or contained in the manufacturer's installation manuals. Insurance Code §6001.052(b) specifies that the commissioner shall adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding: (i) registration of firms engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems or hydrostatic testing of fire extinguisher cylinders; (ii) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (iii) requirements for installing or servicing portable fire extinguishers and planning, certifying, installing, or servicing fixed fire extinguisher systems. Insurance Code §6001.052(c) specifies that the commissioner by rule shall prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under this chapter.

Insurance Code §6002.051(a) specifies that the department shall administer Chapter 6002. Insurance Code §6002.051(b) specifies that the commissioner may adopt rules as necessary to administer Chapter 6002, including rules the commissioner considers necessary to administer Chapter 6002 through the state fire marshal. Insurance Code §6002.052(a) specifies that in adopting necessary rules, the commissioner may use: (i) recognized standards, such as, but not limited to standards of the National Fire Protection Association; standards recognized by federal law or regulation; or standards published by a nationally recognized standards-making organization; (ii) the National Electrical Code; or (iii) information provided by individual manufacturers. Insurance Code §6002.052(b) specifies that rules adopted under §6002.051 may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems, and that the rules must establish appropriate training and qualification standards for each kind of license and certificate. Insurance Code §6002.052(c) specifies that the commissioner shall also adopt standards applicable to fire alarm devices, equipment, or systems regulated under this chapter; and that in adopting standards, the commissioner may allow the operation of a fire alarm monitoring station that relies on fire alarm devices or equipment approved or listed by a nationally recognized testing laboratory without regard to whether the monitoring station is approved or listed by a nationally recognized testing laboratory if the operator of the station demonstrates that the station operating standards are substantially equivalent to those required to be approved or listed.

Insurance Code §6003.051(a) specifies that the department shall administer Chapter 6003. Insurance Code §6003.051(b) specifies that the commissioner may issue rules necessary to administer Chapter 6003 through the state fire marshal. Insurance Code §6003.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards adopted by federal law or regulation; standards published by a nationally recognized standards-making organization; or standards developed by individual manufacturers. Section 6003.054(a) further specifies that the state fire marshal shall implement the rules adopted by the commissioner for the protection and preservation of life and property in controlling: (i) the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and (ii) the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems by determining the criteria and qualifications for registration certificate and license holders; evaluating the qualifications of an applicant for a registration certificate to engage in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; conducting examinations and evaluating the qualifications of a license applicant; and issuing registration certificates and licenses to qualified applicants.

Occupations Code §2154.051 states that the commissioner shall determine reasonable criteria and qualifications for licenses and permits pertaining to the regulation of fireworks and fireworks displays. Section 2154.052 provides that the commissioner shall adopt and the state fire marshal shall administer rules the commissioner considers necessary for the protection, safety, and

preservation of life and property. Under §2154.052(e), a rule may not be adopted under Occupations Code Chapter 2154 that is more restrictive than a rule in effect on September 1, 1998, without specific statutory authority.

Health and Safety Code §796.008 states that the state fire marshal may adopt rules to administer the cigarette fire safety standards chapter.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300252
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: February 14, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 463-6327

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PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

SUBCHAPTER I. MEDICAL BILL REPORTING

28 TAC §134.803, §134.807

The Commissioner of Workers' Compensation (Commmissioner) of the Texas Department of Insurance (Department), Division of Workers' Compensation (Division) adopts amendments to §134.803 concerning Reporting Standards and §134.807 concerning State Specific Requirements. The amendments to §134.803 are adopted with a change to the proposed text as published in the November 9, 2012, issue of the *Texas Register* (37 TexReg 8923). The amendments to §134.807 are adopted without changes to the proposed text as published in the November 9, 2012, issue of the *Texas Register* (37 TexReg 8923).

The public comment period closed on December 10, 2012. The Division received three public comments. The Division did not receive a request for a public hearing. The Division published an informal draft of the proposed amendments on the Department's website from April 24, 2012, until May 24, 2012, and received ten informal comments on the informal draft rules.

Proposed §134.803 is adopted with a change to the proposed text in subsection (b). This change updates the date of the *Texas EDI Medical Difference Table,* Version 2.0 from October 2012 to January 2013. The adopted change is not substantive, does not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

In accordance with Government Code §2001.033(a)(1), the Division's reasoned justification for this rule is set out in this order, which includes the preamble. The preamble contains a summary of the factual basis of the rule, a summary of comments received from interested parties, the names of entities who commented and whether they were in support of or in opposition to the adoption of the rule, and the reasons why the Division agrees or disagrees with the comments and recommendations.

Federal regulations adopted by the Secretary of the Federal Department of Health and Human Services (HHS) in 45 Code of Federal Regulations (CFR) §162.1002 adopt standard medical data code sets that apply to the Medicare system which is regulated by the Centers for Medicare and Medicaid Services (CMS). Relevant to this adoption are the medical data code sets these federal rules adopt for medical diagnoses and inpatient procedures under 45 CFR §162.1002(b)(1). For the period on and after October 16, 2003, through September 30, 2014, the HHS Secretary requires the use of *International Classification of Diseases 9th Edition, Clinical Modification (ICD-9-CM) Volumes 1 and 2* (including The Official ICD-9-CM Guidelines for Coding and Reporting), and for hospital inpatient procedure coding, *International Classification of Diseases, 9th Edition, Clinical Modification, Volume 3 Procedures* (including The Official ICD-9-CM Guidelines for Coding and Reporting)(ICD-9 code sets). For the periods on and after October 1, 2014, the HHS Secretary in 45 CFR §162.1002(c)(2) and (3) requires, for diagnosis coding, the use of *International Classification of Diseases, 10th Revision, Clinical Modification (ICD-10-CM)* (including The Official ICD-10-CM Guidelines for Coding and Reporting), and for hospital inpatient procedure coding, *International Classification of Diseases, 10th Revision Procedure Coding System (ICD-10-PCS)* (including The Official ICD-10-PCS Guidelines for Coding and Reporting) (ICD-10 code sets). The previous compliance date in these federal rules for the ICD-10 code sets was for the period on and after October 1, 2013; however, recent amendments to 45 CFR §162.1002(b) and (c) as published in the September 5, 2012, issue of the Federal Register, 77 FR 5420, extend the compliance date for the ICD-10 code sets for the period to October 1, 2014.

Labor Code §413.011 and corresponding Division rules require the Commissioner to adopt the most current reimbursement methodologies, models, and values or weights used by CMS, including applicable payment policies relating to coding, billing, and reporting for use in the workers' compensation system. As a result, health care providers currently include appropriate ICD-9-CM codes on their medical bills to workers' compensation insurance carriers. Accordingly, once CMS requires the use of ICD-10-CM for diagnosis coding and ICD-10-PCS codes for inpatient procedure coding on medical bills for services rendered, health care providers in the workers' compensation system will begin using these codes to bill for medical services.

These adopted amendments affect Division rules in 28 Texas Administrative Code (TAC) Chapter 134, Subchapter I that implement the legislative directives in Labor Code §413.007 and §413.008 and that require insurance carriers to report to the Division specific billing and payment data for each medical bill submitted on a workers' compensation claim. Specifically, these adopted amendments make necessary modifications to §134.803 and §134.807 which will allow insurance carriers to

include ICD-10 codes sets in their medical billing and payment reports to the Division once health care providers initiate use of the ICD-10 code sets in their medical bills. Prior to these adopted amendments, these reporting rules only supported the submission of the ICD-9 code sets. As more fully described below, these adopted amendments will allow insurance carriers to include either the ICD-9 or ICD-10 code sets in their medical billing and payment reports, whichever is appropriate.

In addition to the adopted amendments that implement the reporting of ICD-9 code sets or ICD-10 code sets under Subchapter I of Chapter 134 of this title, the Division has also adopted nonsubstantive changes that are designed to provide increased clarity and readability in Division rules. These other adopted amendments are described below.

Amended §134.803.

The adopted amendments to §134.803(b) adopt by reference the *Texas EDI Medical Difference Table,* Version 2.0, dated January 2013. This new table contains changes to the previously adopted difference table which are necessary to delineate the difference in which the Division implemented the IAIABC EDI Implementation Guide with regard to the reporting of diagnosis and procedure codes. The *Texas EDI Medical Difference Table,* Version 2.0 includes the Texas segment/elements that need to be populated with the ICD-9 code sets or ICD-10 code sets contained on medical bills.

Specifically, the adopted difference table documents how insurance carriers are to report data for data elements HI01-2, HI02-2, HI03-2, HI04-2, and HI05-2 in the HI segment. (See pages 4 and 5 of the adopted *Texas EDI Medical Difference Table,* Version 2.0, dated January 2013). These changes are necessary because they will require insurance carriers to submit ICD-10 code sets in a medical EDI record once health care providers begin submitting these codes on medical bills. Furthermore, the adopted difference table clarifies that each of those specified data elements can be populated with the ICD-9 or ICD-10 CM code, or ICD-9 or ICD-10 PCS code, when the appropriate code is contained on the medical bill.

This adopted difference table also makes nonsubstantive revisions to the previously adopted difference table for purposes of improved clarity and readability. These revisions include a new column titled "Row Type" which contains a general description of each row. Also, the CAS segment on the table is titled "Claims Adjustment."

The adopted amendments to subsection (c) are necessary to update the Division's website address to read http://www.tdi.texas.gov/wc/indexwc.html.

Finally, the adopted amendments to §134.803 delete subsection (e) concerning the September 1, 2011, effective date because that effective date provision is no longer necessary. In accordance with Government Code §2001.036, the effective date for this amended rule will be 20 days after the date it is filed with the Office of the Secretary of State.

Amended §134.807

Section 134.807 concerns state specific requirements. The two changes in the adopted amendments relate to subsections (f) and (g). The adopted change in amended subsection (f) is the addition of (f)(4) which states: *(4) When ICD-10-CM and ICD-10-PCS codes are contained on the medical bill, the insurance carrier must report these codes in the associated ICD-9-CM data elements using the ICD-9-CM code qualifiers.* The instruction is necessary to provide guidance to insurance carriers and their trading partners so that they will know how to populate ICD-10-CM and ICD-10-PCS code in the ICD-9 data elements when appropriate. These segment/elements are specified in the adopted *Texas EDI Medical Difference Table,* Version 2.0, dated January 2013 on pages 4 and 5, Loop Identifier 2300, Segment/Element HI.

The adopted amendments to §134.807 also delete subsection (g) concerning the September 1, 2011, effective date because that effective date is no longer necessary. In accordance with Government Code §2001.036, the effective date of the amended rule will be 20 days after the date it is filed with the Office of the Secretary of State.

SUMMARY OF COMMENTS AND AGENCY RESPONSES

General: Commenter supports the approach taken by the Division which retains the use of the *IAIABC EDI Implementation Guide for Medical Bill Payment Records, Release 1.0 (July 4, 2002)* while requiring insurance carriers to populate the ICD-10 codes in the ICD-9 data elements when appropriate through the use of the *Texas EDI Difference Table, Version 2.0 (April 2012).*

Agency Response: The Division appreciates the supportive comment.

General: Two commenters oppose these rule amendments and urge the Division to adopt the IAIABC Workers' Compensation Medical Bill Data Reporting EDI Implementation Guide, Release 2, dated February 1, 2012, (Release 2) as well as the ASC X12 5010 standard code sets which support the reporting of ICD-10CM and ICD-10-PCS codes. One commenter states that North Carolina has already adopted Release 2 and that California and Oregon have indicated their intent to adopt Release 2. The commenter states the Division's approach in modifying Release 1 will require entities operating in these other states to maintain three separate platforms, EDI Release 1.1, the Texas approach, and Release 2. The commenter states this approach negates the value of having standardized reporting platforms and adds cost to the overall system for any entity operating in multiple states with no overall system benefit or savings. Another commenter states that insurance carriers would have two years to convert their systems, and it would be more efficient and less costly in the long run to simply adapt systems to the new Release 2 standard rather than maintain a unique Release 1 system with Texas-only modifications. The commenter states that while adoption of a Release 1 with Texas-only modifications may seem less intensive and less costly, maintaining a Texas only standard would add complexity and duplicative processes and, in the long term, be more costly both in terms of expenses and personnel hours.

Agency Response: The Division disagrees with adopting Release 2 and the ASC X12 5010 standard code sets at this time. The Division also disagrees that by not adopting Release 2, complexity, duplicative processes, and greater costs are added to the system. During the development of these rule amendments designed to accommodate ICD-10 codes in medical bill and payment reporting, the Division did consider adopting Release 2 as an alternative approach. However, after considering the feasibility, timeframes, and costs of implementing Release 2 for all system participants the Division elected to maintain the system currently in place with a few modifications at this time for several reasons.

First, Release 2 is only recently available and has not been implemented for mandatory use by other jurisdictions. Additionally,

adopting Release 2 would require a much longer implementation period. The longer implementation period for Release 2 will not allow the Division and impacted system participants sufficient time to make the necessary technology changes and also undergo the required testing to fully implement Release 2 by October 1, 2014. Instead, the decision to adopt these amendments is prudent and less complex because it provides the necessary time for the Division and impacted system participants in the Texas workers' compensation system to conduct thorough testing to avoid costly obstacles that could otherwise emerge with the immediate full implementation of Release 2. Lastly, these adopted amendments make only minimal changes to the current Release 1 platform already implemented and used by the Division and system participants. These minimal changes set forth in these adopted amendments are necessary so the Division can meet its data collection needs with regard to ICD-10 code sets. The costs imposed by these changes are nominal and relate only to those modifications that will allow for the submission and collection of ICD-10 code sets in medical EDI records. At this time, the better approach is to implement the minimal changes set forth in these amendments in order to collect the new ICD-10 code sets when appropriate.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL

For: Property Casualty Insurers Association of America

For, with changes: None

Against: Healthesystems and American Insurance Association

Neither for or Against: None

The amendments are adopted under the Labor Code §§413.007, 413.008, 413.011, 413.0511, 413.0512, 402.075, and 405.0025 and under the general authority of §§402.00111, 402.00128, and 402.061, and Government Code §2001.0036.

Labor Code §413.007 requires the Division to maintain a statewide data base of medical charges, actual payments, and treatment protocols that may be used by the Commissioner in adopting medical policies and fee guidelines and the Division in administering the medical policies, fee guidelines, or sections. Labor Code §413.007, also requires that the Division ensure that the data base contains information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols that can be used in a meaningful way to allow the Division to control medical costs as provided by Texas Workers' Compensation Act.

Labor Code §413.008 provides that on request from the Division for specific information, an insurance carrier shall provide to the Division any information in the insurance carrier's possession, custody, or control that reasonably relates to the Division's duties under the Act and to health care treatment, services, fees, and charges.

Labor Code §413.011 in relevant part, requires the Commissioner to adopt the most current reimbursement methodologies, models, and values or weights used by CMS, including applicable coding, billing, and reporting policies, and to adopt rules that remain aligned, to the extent possible, with CMS coding, billing, and reporting policies.

Labor Code §413.0511 and §413.0512 require the Division's Medical Advisor and Medical Quality Review Panel to monitor the quality of health care and recommend appropriate actions regarding doctors, other health care providers, insurance carriers, utilization review agents, and independent review organizations. Medical bill reporting data collected from the statewide data base contain information that assist the Division Medical Advisor and the Medical Quality Review Panel in performing their duties under §413.0511 and §413.0512.

Labor Code §402.075 requires the Commissioner of Workers' Compensation to assess, at least biennially, the performance of insurance carriers and health care providers in meeting key regulatory goals

Labor Code §405.0025 requires the Workers' Compensation Research and Evaluation Group to conduct professional studies on the quality and cost of medical benefits and to produce a biennial report on the impact of certified networks.

Labor Code §402.00111 provides that the Commissioner shall exercise all executive authority, including rulemaking authority, under Title 5, Labor Code. Labor Code §402.00128 lists the general powers of the Commissioner including the power to hold hearings and the authority to assess and enforce penalties as authorized by Title 5, Labor Code. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Government Code §2001.036, provides in relevant part, that a rule takes effect 20 days after the date on which it is filed in the Office of the Secretary of State, except that if a later date is specified in the rule, the later date is the effective date.

§134.803. Reporting Standards.

(a) Except as provided in this subchapter, the commissioner adopts by reference the IAIABC EDI Implementation Guide for Medical Bill Payment Records, Release 1.0, dated July 4, 2002 (IAIABC EDI Implementation Guide) published by the International Association of Industrial Accident Boards and Commissions (IAIABC).

(b) The commissioner adopts by reference the *Texas EDI Medical Data Element Requirement Table,* Version 1.0, dated June 2011, the *Texas EDI Medical Data Element Edits Table,* Version 1.0, dated June 2011, and the *Texas EDI Medical Difference Table,* Version 2.0, dated January 2013. All tables are published by the division.

(c) Information on how to obtain or inspect copies of the IAIABC EDI Implementation Guide and the adopted division tables may be found on the division's website: http://www.tdi.texas.gov/wc/indexwc.html.

(d) In the event of a conflict between the IAIABC EDI Implementation Guide and the Labor Code or division rules, the Labor Code or division rules shall prevail.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 28, 2013.

TRD-201300304
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: February 17, 2013
Proposal publication date: November 9, 2012
For further information, please call: (512) 804-4703

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 367. CONTINUING EDUCATION

40 TAC §§367.1 - 367.3

The Texas Board of Occupational Therapy Examiners (TBOTE) adopts amendments to §§367.1 - 367.3, concerning Continuing Education. Section 367.1 is adopted with changes to the proposed text as published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8188) and will be republished. Section 367.2 and §367.3 are adopted without changes to the proposed text and will not be republished.

The amendments add more specific information about what is required for proof and required documentation for educational audits; and add a new category for obtaining continuing education.

One comment was received regarding adoption of the amendment to §367.1(d)(1)(A), which suggested the term "evaluation" rather than "assessment" in the definition of Type 2. The board agreed with the suggestion and added the word evaluation.

The amendments are adopted under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454 of the Texas Occupations Code, which provides the TBOTE with the authority to adopt rules consistent with this Act to carry out the duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Texas Occupations Code is affected by the amended sections.

§367.1. Continuing Education.

(a) The Act mandates licensee participation in a continuing education program for license renewal. All continuing education must be directly relevant to the profession of occupational therapy and meet the definition of Type 1 or Type 2 as outlined in this section. The licensee is solely responsible for keeping accurate documentation of all continuing education requirements.

(b) All licensees must complete a minimum of 30 hours of continuing education every two years during the period of time the license is current in order to renew the license, and provide this information as requested.

(c) Those renewing a license more than 90 days late must submit proof of continuing education for the renewal.

(d) Types of Continuing Education.

(1) A minimum of 15 hours of continuing education must be in skills specific to occupational therapy practice with patients or clients hereafter referred to as Type 2.

(A) Type 2 courses teach occupational therapy evaluation, assessment, intervention or prevention and wellness with patients or clients.

(B) All continuing education hours may be in Type 2, but no less than 15 hours of Type 2 is acceptable.

(2) General information hereafter referred to as Type 1 continuing education is relevant to the profession of occupational therapy. Examples include but are not limited to: supervision, education, documentation, pharmacology, quality improvement, administration, reimbursement and other occupational therapy related subjects.

(e) Specific continuing educational activities may be counted only one time in the licensee's career unless content has been updated or revised.

(f) Effective January 1, 2003, Type 1 and Type 2 educational activities approved or offered by the American Occupational Therapy Association or the Texas Occupational Therapy Association are preapproved by the board. The board will review its approval process and continuation thereof for educational activities by January 2005 and at least once each five-year period thereafter.

(g) Licensees are responsible for choosing Type 1 or Type 2 CE according to the definitions in this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300266
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: February 14, 2013
Proposal publication date: October 12, 2012
For further information, please call: (512) 305-6900

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CHAPTER 376. REGISTRATION OF FACILITIES

40 TAC §§376.4, 376.6, 376.8

The Texas Board of Occupational Therapy Examiners (TBOTE) adopts amendments to §§376.4, 376.6, and 376.8, concerning Registration of Facilities. Section 376.4 and §376.8 are adopted without changes to the proposed text as published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8190) and will not be republished. Section 376.6 is adopted with changes to the proposed text and will be republished. Section 376.6 is adopted with changes to make minor grammatical corrections in the rule.

The amendments add a requirement that the facility owner notify the board within 30 days when occupational therapy services are no longer being provided; how late fees are assessed; and information about the restoration of facility registration process.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454 of the Texas Occupations Code, which provides the TBOTE with the authority of adopt rules consistent with this Act to carry out the duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Texas Occupations Code is affected by the amended sections.

§376.6. Renewal of Registration Application.

(a) An individual or entity registered as a facility under this chapter must renew its registration annually. Licensee may not provide occupational therapy services in a facility if the registration is not

current. The Board will maintain a secure resource for verification of registration status and expiration date on its website.

(b) Requirements to renew a facility are:

(1) a renewal signed by the owner, managing partner or officer, or a person authorized by the owner to complete the form and the OT or OTR-in-charge;

(2) a list of all occupational therapy practitioners working at the facility;

(3) the renewal fee as set by the Executive Council, and any late fees, which may be due; and

(4) an Occupational Therapist-in-Charge form with the signature of the occupational therapist, if the Therapist-in-Charge has changed.

(c) The annual renewal date of a facility registration is the last day of the month in which the registration was originally issued, or as synchronized with the first facility registered by an owner. The owner of OT facilities may request that the renewal date of the OT facilities be synchronized with the PT facilities in the same locations.

(d) The board will notify the facility at least 30 days before the registration expiration date. An individual or entity offering occupational therapy bears the responsibility for ensuring that the registration is renewed. Failure to receive a renewal notice from the board does not exempt the requirement to pay the renewal fee in a timely manner.

(e) Occupational therapy services may not be provided at a facility without a current facility registration. The current registration expiration date as displayed on the board's website is considered evidence of the current registration.

(f) Late Renewal. A facility renewing after the expiration date, must submit all the items listed in subsection (b) of this section plus the late fee which is determined as:

(1) One day late to 90 days late--a late fee equal to half the renewal fee, plus the renewal fee.

(2) More than 90 days to less than one year late--a late fee equal to the renewal fee, plus the renewal fee.

(3) A facility late more than one year must follow the requirements set out in §376.8 of this title (relating to Restoration of Registration).

(4) An owner may not register a new facility in lieu of renewal of a previously registered facility at the same location.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2013.

TRD-201300267
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: February 14, 2013
Proposal publication date: October 12, 2012
For further information, please call: (512) 305-6900

♦ ♦ ♦

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Board of Veterinary Medical Examiners

Title 22, Part 24

The Texas Board of Veterinary Medical Examiners (TBVME) proposes the rule review of 22 TAC Chapter 575, Practice and Procedure, pursuant to the Texas Government Code, §2001.039.

Chapter 575 contains the following sections: §§575.1 - 575.10, 575.22, 575.24, 575.25, 575.27 - 575.30, 575.35, 575.36, 575.40, 575.50, 575.60 - 575.62 and 575.281.

As required by the Texas Government Code, §2001.039, TBVME will accept comments as to whether the reasons for adopting Chapter 575 continue to exist. The assessment made by TBVME indicates that the reasons for initially adopting the chapter do continue to exist. Contemporaneously with this proposal, TBVME is also publishing in this issue of the *Texas Register* proposed amendments to §§575.10, 575.28, 575.29, 575.30 and 575.50 and proposed new §575.20. TBVME proposes to readopt the other sections of Chapter 575 without amendment.

Comments or questions regarding this rule review may be submitted to should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by email to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

TRD-201300298
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Filed: January 28, 2013

♦ ♦ ♦

Adopted Rule Reviews

Texas Commission on Fire Protection

Title 37, Part 13

The Texas Commission on Fire Protection (commission) files notice of completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 421, concerning Standards for Certification.

The review was conducted in accordance with Texas Government Code §2001.039. The commission reviewed these rules and received no comments on the proposed rule review, which was published in the November 9, 2012, issue of the *Texas Register* (37 TexReg 8999). The Texas Commission on Fire Protection has determined that the reasons for adopting these rules continue to exist.

This concludes and completes the review of Chapter 421.

TRD-201300331
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: January 29, 2013

♦ ♦ ♦

The Texas Commission on Fire Protection (commission) files notice of the completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 423, concerning Fire Suppression.

The review was conducted in accordance with Texas Government Code §2001.039. The commission reviewed these rules and received no comments on the proposed rule review, which was published in the November 9, 2012, issue of the *Texas Register* (37 TexReg 8999). The Texas Commission on Fire Protection has determined that the reasons for adopting these rules continue to exist.

This concludes and completes the review of Chapter 423.

TRD-201300332
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: January 29, 2013

♦ ♦ ♦

The Texas Commission on Fire Protection (commission) files notice of the completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 425, concerning Fire Service Instructors.

The review was conducted in accordance with Texas Government Code §2001.039. The commission reviewed these rules and received no comments on the proposed rule review, which was published in the November 9, 2012, issue of the *Texas Register* (37 TexReg 8999). The Texas Commission on Fire Protection has determined that the reasons for adopting these rules continue to exist.

This concludes and completes the review of Chapter 425.

TRD-201300333
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: January 29, 2013

♦ ♦ ♦

The Texas Commission on Fire Protection (commission) files notice of the completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 427, concerning Training Facility Certification.

The review was conducted in accordance with Texas Government Code §2001.039. The commission reviewed these rules and received no comments on the proposed rule review, which was published in the November 9, 2012, issue of the *Texas Register* (37 TexReg 9000). The commission received no comments on the proposed amendments. The commission has determined that the reasons for adopting these rules continue to exist.

This concludes and completes the review of Chapter 427.

TRD-201300334
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: January 29, 2013

♦ ♦ ♦

The Texas Commission on Fire Protection (commission) files notice of the completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 429, concerning Minimum Standards for Fire Inspectors.

The review was conducted in accordance with Texas Government Code §2001.039. The commission reviewed these rules and received no comments on the proposed rule review, which was published in the November 9, 2012, issue of the *Texas Register* (37 TexReg 9000). The Texas Commission on Fire Protection has determined that the reasons for adopting these rules continue to exist.

This concludes and completes the review of Chapter 429.

TRD-201300335
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: January 29, 2013

♦ ♦ ♦

The Texas Commission on Fire Protection (commission) files notice of the completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 439, concerning Examinations for Certification.

The review was conducted in accordance with Texas Government Code §2001.039. The commission reviewed these rules and received no comments on the proposed rule review, which was published in the November 9, 2012, issue of the *Texas Register* (37 TexReg 9000). The Texas Commission on Fire Protection has determined that the reasons for adopting these rules continue to exist.

This concludes and completes the review of Chapter 439.

TRD-201300336
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: January 29, 2013

♦ ♦ ♦

The Texas Commission on Fire Protection (commission) files notice of the completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 441, concerning Continuing Education.

The review was conducted in accordance with Texas Government Code §2001.039. The commission reviewed these rules and received no comments on the proposed rule review, which was published in the November 9, 2012, issue of the *Texas Register* (37 TexReg 9001). The Texas Commission on Fire Protection has determined that the reasons for adopting these rules continue to exist.

This concludes and completes the review of Chapter 441.

TRD-201300337
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: January 29, 2013

♦ ♦ ♦

The Texas Commission on Fire Protection (commission) files notice of the completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 451, concerning Fire Officer.

The review was conducted in accordance with Texas Government Code §2001.039. The commission reviewed these rules and received no comments on the proposed rule review, which was published in the November 9, 2012, issue of the *Texas Register* (37 TexReg 9001). The Texas Commission on Fire Protection has determined that the reasons for adopting these rules continue to exist.

This concludes and completes the review of Chapter 451.

TRD-201300338
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: January 29, 2013

♦ ♦ ♦

The Texas Commission on Fire Protection (commission) files notice of the completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 453, concerning Minimum Standards for Hazardous Materials Technician.

The review was conducted in accordance with Texas Government Code §2001.039. The commission reviewed these rules and received no comments on the proposed rule review, which was published in the November 9, 2012, issue of the *Texas Register* (37 TexReg 9001). The Texas Commission on Fire Protection has determined that the reasons for adopting these rules continue to exist.

This concludes and completes the review of Chapter 453.

TRD-201300339
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: January 29, 2013

♦ ♦ ♦

The Texas Commission on Fire Protection (commission) files notice of the completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 491, concerning Voluntary Regulation of State Agencies and State Agency Employees.

The review was conducted in accordance with Texas Government Code §2001.039. The commission reviewed these rules and received no comments on the proposed rule review, which was published in the November 9, 2012, issue of the *Texas Register* (37 TexReg 9001). The Texas Commission on Fire Protection has determined that the reasons for adopting these rules continue to exist.

This concludes and completes the review of Chapter 491.

TRD-201300340

Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: January 29, 2013

♦ ♦ ♦

The Texas Commission on Fire Protection (commission) files notice of the completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 493, concerning Voluntary Regulation of Federal Agencies and Federal Fire Fighters.

The review was conducted in accordance with Texas Government Code §2001.039. The commission reviewed these rules and received no comments on the proposed rule review, which was published in the November 9, 2012, issue of the *Texas Register* (37 TexReg 9002). The Texas Commission on Fire Protection has determined that the reasons for adopting these rules continue to exist.

This concludes and completes the review of Chapter 493.

TRD-201300341
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: January 29, 2013

♦ ♦ ♦

The Texas Commission on Fire Protection (commission) files notice of the completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 495, concerning Regulation of Nongovernmental Departments.

The review was conducted in accordance with Texas Government Code §2001.039. The commission reviewed these rules and received no comments on the proposed rule review, which was published in the November 9, 2012, issue of the *Texas Register* (37 TexReg 9002). The Texas Commission on Fire Protection has determined that the reasons for adopting these rules continue to exist.

This concludes and completes the review of Chapter 495.

TRD-201300342
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: January 29, 2013

♦ ♦ ♦

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §661.55(g)

STATE OF TEXAS

COUNTY OF _____

I _____ the duly authorized responsible party on behalf of _____ (Firm), Texas Board of Professional Land Surveying Firm Registration Certificate Number_____, hereinafter referred to as "Firm" hereby affirm that the Firm will place the interest of the public above all others in its practice of Professional Land Surveying and will adhere to the Texas Board of Professional Land Surveying Act and General Rules of Procedures and Practices.

_____

(Signature)

_____

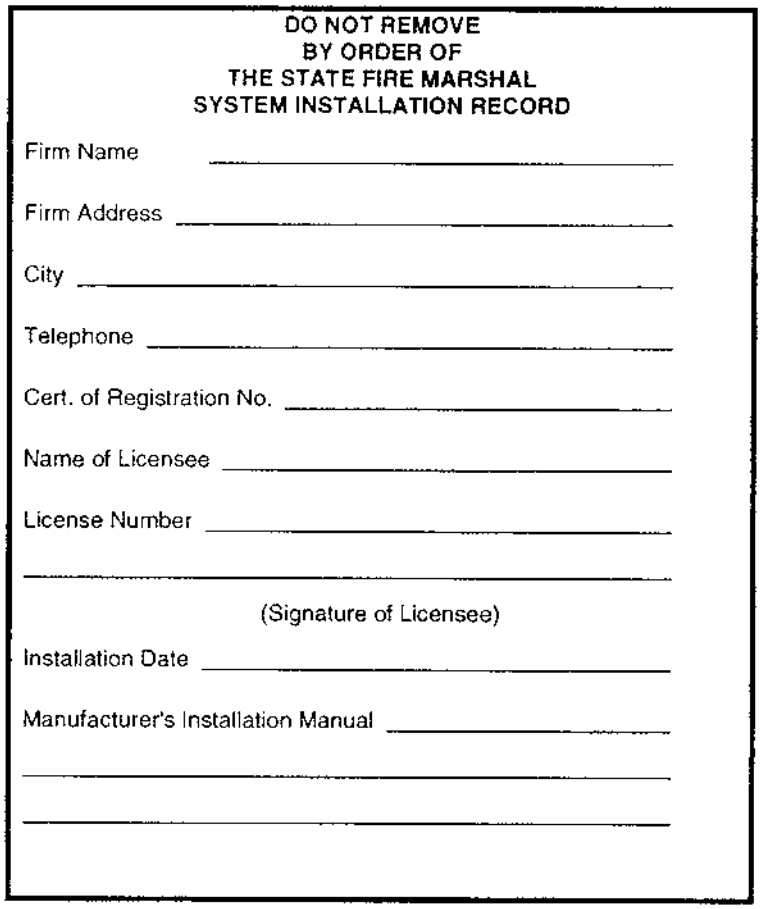
(Printed Name and Title or Office)

_____

(Date)

Sworn to and subscribed by _____

Figure: 28 TAC §34.519(b)



DO NOT REMOVE
BY ORDER OF
THE STATE FIRE MARSHAL
SYSTEM INSTALLATION RECORD

Firm Name _____

Firm Address _____

City _____

Telephone _____

Cert. of Registration No. _____

Name of Licensee _____

License Number _____

_____

(Signature of Licensee)

Installation Date _____

Manufacturer's Installation Manual _____

_____

_____

Figure: 28 TAC §34.519(c)

Texas Department of Insurance
State Fire Marshal's Office Mail Code 112-FM
333 Guadalupe • P. O. Box 149221, Austin, Texas 78714-9221
512-305-7900 • 512-305-7910 fax • www.tdi.texas.gov

INSTALLING COMPANY _____
Address: _____
City: _____ Zip _____
Phone: _____
Company Certificate of Registration Number _____

PROTECTED PROPERTY
Name: _____
Street Address: _____
City: _____ *Zip:* _____
Owner or Owner's representative instructed on system operation & maintenance: ☐ Yes ☐ No
Owners Rep, if applicable: _____

LOCAL AUTHORITY HAVING JURISDICTION
Name: _____
Street Address: _____
City: _____ *Zip:* _____

HAZARD ANALYSIS
Name of area, room, building or hazard protected
_____
Primary Class of Protected Hazard
☐ Class A - Wood, paper, etc.
☐ Class B - Flammable liquids
☐ Class C - Electrical equipment
☐ Class D - Combustible metals
☐ Explosives
☐ _____

Kitchen Hoods & Appliance System

	Height	Length	Width
Overall Hood	____ ft x	____ ft x	____ ft
Plenum		____ ft x	____ ft
Exhaust duct perimeter		____ in	

Qty	Appliances Protected	Gas or Elect	Length	Width
____	Deep Fat Fryer	____	____ in x	____ in
____	Range	____	____ in x	____ in
____	Griddle	____	____ in x	____ in
____	Char Broiler	____	____ in x	____ in
____	Radiant Broiler	____	____ in x	____ in
____	Upright Broiler	____	____ in x	____ in
____	_____	____	____ in x	____ in
____	_____	____	____ in x	____ in
____	_____	____	____ in x	____ in

Other Type Hazards
Is hazard normally occupied? ☐ Yes ☐ No ☐ N/A
Size of Hazard
Total Volume _____ cuft
or Total Area _____ sqft

	Height	Length	Width
approx.	____ ft x	____ ft x	____ ft
approx.	____ ft x	____ ft x	____ ft
approx.	____ ft x	____ ft x	____ ft

Area sealed to prevent agent loss? ☐ Yes ☐ No ☐ N/A
Number of room air changes per minute? ____ /min. ☐ N/A
Warning & instruction signs posted? ☐ Yes ☐ No ☐ N/A

SYSTEM INFORMATION
System Manufacturer's Name: _____
Installation Manual: *UL Number:* _____ *Date:* _____
Design type: *Pre-engineered:* _____ *Engineered:* _____
If Pre-engineered, Model Number _____
Coverage Type: *Total Flooding:* _____ *Local App:* _____
System Actuation: *Automatic:* _____ *Manual:* _____
Air/Fan shutdown on actuation? Yes: _____ *No:* _____
Design discharge rate or concentration level: _____
Design discharge time: *Seconds:* _____

AGENT INFORMATION
Type of agent provided: _____

Qty	Storage cylinder	Manufacturer	Part No.	Amount of agent
____	_____	_____	_____	_____
____	_____	_____	_____	_____

EQUIPMENT INFORMATION
Initiating Devices

Qty	Item	Manufacturer	Part No.	Temperature
____	Fusible Links	_____	_____	_____
____	Sprinkler Heads	_____	_____	_____
____	Heat Detectors	_____	_____	_____
____	Smoke Detectors	_____	_____	_____
____	Other Fire Detectors	_____	_____	_____
____	Manual Pull Stations	_____	_____	_____

Nozzles	*Part No.*	*Qty*	*Part No.*
____	_____	_____	_____
____	_____	_____	_____

Interlock	*Item*	*Manufacturer*	*Part No.*
____	Fan or A/C Shutdown	_____	_____
____	Gas line Shut-off	_____	_____
____	Electric Shut-off	_____	_____

Use the back of the form, or additional paper, to sketch the piping configuration and device location.

TESTING
Method system was tested: _____

This system was installed in accordance with the following codes:

NFPA	____ Year	____
NFPA	____ Year	____
_____	____ Year	____
_____	____ Year	____

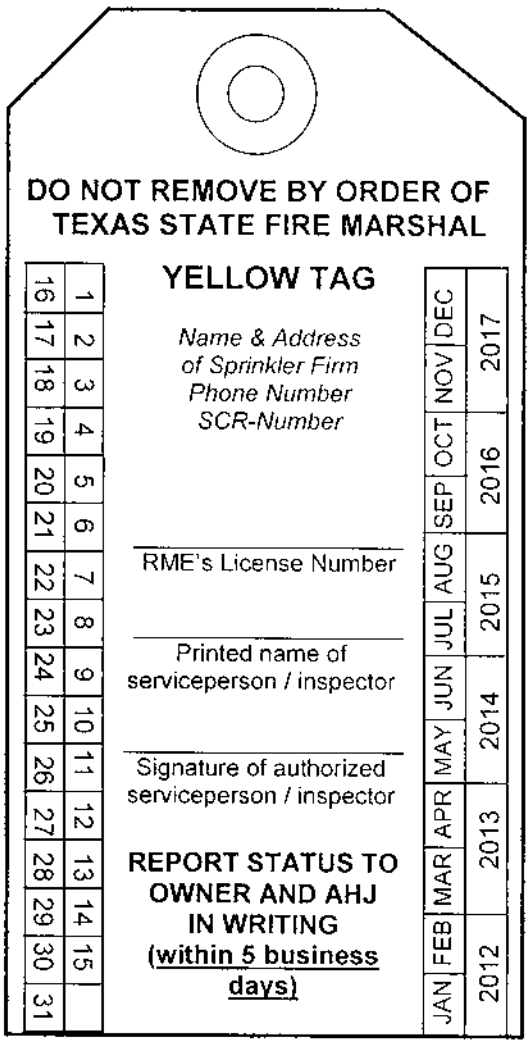
I certify that this fixed fire extinguishing system has been tested and complies with the requirements of Chapter 6001 of the Texas Insurance Code, as amended, and the fire extinguisher rules and adopted NFPA Standards.

_____ _____
Signature of Licensee & License Number

_____ _____
Planning Superintendent & License Number
Completion Date _____

Reproduce Form & Distribute
Original to Protected Premise
Copy 1 to Authority having Jurisdiction
Copy 2 Certifying Firm for access by SFMO
Former FML 010 October 2012
SF205 Rev. 10/12

Figure 28 TAC §34.721(g)



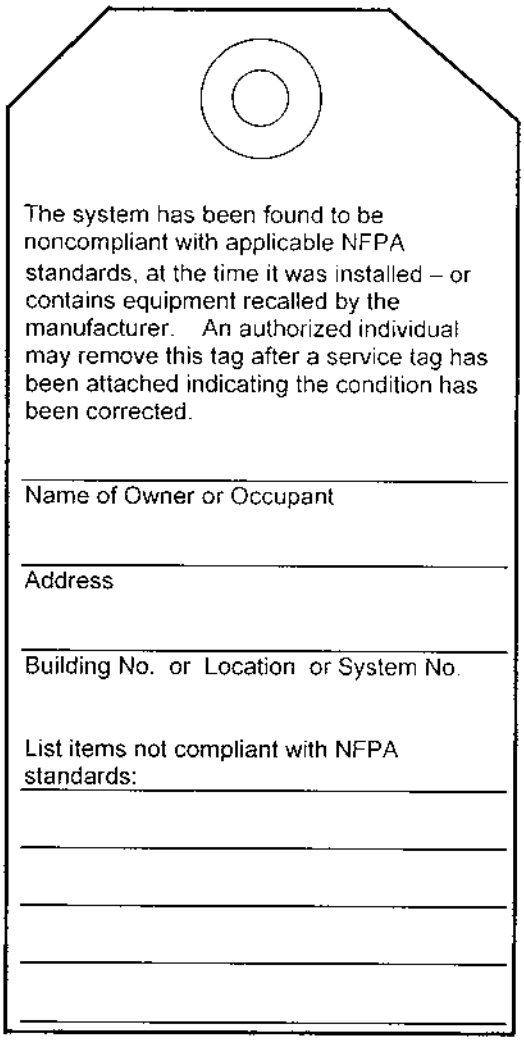


Figure: 28 TAC §34.1302(a)

Citation	Violation	Penalty
Insurance Code §6001.251(a)	No registration certificate	$3,000
Insurance Code §6001.251(a)(3)	No license	$3,000
Insurance Code §6001.252(a)(3)	Misrepresentation in connection with sale or services	$1000
28 TAC §34.510(f)	Registration information not displayed on vehicle(s)	$250
28 TAC §34.511(f)(1)	Licensee not employed by registered firm	$2,000
28 TAC §34.517	Failure to comply with adopted standards or manufacturer's instructions	$500
28 TAC §34.517(a)(2)	Service tag not attached - portables	$250
28 TAC §34.517(b)	Installation label not affixed to system upon completion	$500
28 TAC §34.517(b)(4)	Service tag not attached – fixed system	$500
28 TAC §34.517(h)	Fusible link manufacturer date not within 1 year	$500
28 TAC §34.517(i)	Actuation cartridge not dated	$500
28 TAC §34.517(j)	Seal or tamper indicator not dated	$500
28 TAC §34.519(a)	Service tag not completed in detail	$250
28 TAC §34.521(a)	Owner or AHJ not notified as required of unsafe or inoperable portable or fixed extinguisher	$500
28 TAC §34.521(a)	Failed to attach red tag to impaired extinguisher	$500
28 TAC §34.521(a)	Attached service tag to impaired extinguisher	$1,000

28 TAC §34.514(a)(5)(B)	Lapse of Insurance				
Months	Penalty	+	Amount saved		Total
0 - 1	$200	+	$125	=	Warning Ltr
1 - 2	$500	+	$250	=	$750
2 - 3	$500	+	$375	=	$875
3 - 4	$500	+	$500	=	$1,000
4 - 5	$500	+	$625	=	$1,125
5 - 6	$500	+	$750	=	$1,250
6 - 7	$750	+	$875	=	$1,625
7 - 8	$750	+	$1,000	=	$1,750
8 - 9	$750	+	$1,125	=	$1,875
9 - 10	$750	+	$1,250	=	$2,000
10 - 11	$750	+	$1,375	=	$2,125
11 - 12	$750	+	$1,500	=	$2,250

Figure: 28 TAC §34.1302(b)

Citation	Violation	Penalty
Insurance Code §6002.301	Engage in business w/o license or registration certificate	$3,000
Insurance Code §6002.302(a)(3)	Misrepresentation in connection with sale or services	$1000
28 TAC §34.610(c)	Registration information not displayed on vehicle	$250
28 TAC §34.616(b)(1)	Installation not performed by or under direct on-site supervision of authorized licensee	$2,000
28 TAC §34.616(b)(2)	Maintenance or service not performed by or under direct on-site supervision of authorized licensee	$2,000
28 TAC §34.616(b)(4)	Failure to comply with adopted standards	$500
28 TAC §34.616(c)(1)	Monitoring an alarm for an unregistered firm	$3000
28 TAC §34.616(c)(2)(A)	Connecting an alarm to an unregistered monitoring firm	$3000
28 TAC §34.619(a)	System or modification to existing system not planned by authorized person	$3,000
28 TAC §34.620(a)	Installation label not affixed to inside of control panel cover	$500
28 TAC §34.621(a)	Service label not affixed to control panel cover	$500
28 TAC §34.622(a)	Inspection/test label not affixed to inside of control panel cover	$500
28 TAC §34.623(a)	Completed yellow label not attached to outside of control panel of non-compliant system	$500
28 TAC §34.624(a)	Completed red label not attached to outside of control panel of impaired system	$1000
28 TAC §34.623, §34.624	Owner or AHJ not notified within required time of yellow or red label conditions	$500

28 TAC §34.613(a)(5)(B)	Lapse of Insurance			
Months	Penalty	+	Amount saved	Total
0 - 1	$200	+	$125	= Warning Ltr
1 - 2	$500	+	$250	= $750
2 - 3	$500	+	$375	= $875
3 - 4	$500	+	$500	= $1,000
4 - 5	$500	+	$625	= $1,125
5 - 6	$500	+	$750	= $1,250
6 - 7	$750	+	$875	= $1,625
7 - 8	$750	+	$1,000	= $1,750
8 - 9	$750	+	$1,125	= $1,875
9 - 10	$750	+	$1,250	= $2,000
10 - 11	$750	+	$1,375	= $2,125
11 - 12	$750	+	$1,500	= $2,250

Figure: 28 TAC §34.1302(c)

Citation	Violation	Penalty
Insurance Code §6003.151(a)	Engage in business w/o registration certificate	$3,000
Insurance Code §6003.153(b)	Act as responsible managing employee (RME) w/o holding license	$3,000
Insurance Code §6003.252(3)	Misrepresentation connected to sales or service	$1000
28 TAC §34.710(a)	sub contracting to unregistered firm to perform work of fire protection sprinkler contractor	$3,000
28 TAC §34.711(a)	Firm's RME not licensed or license expired	$1000
28 TAC §34.716(a)	System not installed under supervision of appropriately licensed individual	$3,000
28 TAC §34.716(b)	Failed to affix material and test certificate on or near riser	$500
28 TAC §34.716(c)	Service, maintenance, or testing not performed by appropriately licensed individual	$3,000
28 TAC §34.716(d)	Records not available for examination	$500
28 TAC §34.716(e)	Registration information not displayed on vehicle	$250
28 TAC §34.716(h)	System planning not performed under direct supervision of appropriately licensed RME	$3,000
28 TAC §34.716(i)	Failed to comply with adopted standards	$500
28 TAC §34.717	Violations related to requirements of sprinkler system plans	$500
28 TAC §34.718(a)	Installation tag not completed in detail / attached to riser	$500
28 TAC §34.719(a)	Service tag not completed in detail / attached to riser	$500
28 TAC §34.720(a)	ITM tag not completed in detail / attached to riser	$500
28 TAC §34.721(a)	Yellow tag not completed / attached to noncompliant system	$500
28 TAC §34.722(a)	Red tag not completed and attached to system with an emergency impairment	$500
28 TAC §34.721, §34.722	Owner / AHJ not notified within required time of yellow or red tag conditions	$500

28 TAC §34.713(a)(7)(B)	Lapse of Insurance				
Months	Penalty	+	Amount saved		Total
0 – 1	$200	+	$125	=	Warning Letter
1 - 2	$500	+	$250	=	$750
2 - 3	$500	+	$375	=	$875
3 - 4	$500	+	$500	=	$1,000
4 - 5	$500	+	$625	=	$1,125
5 - 6	$500	+	$750	=	$1,250
6 - 7	$750	+	$875	=	$1,625
7 - 8	$750	+	$1,000	=	$1,750
8 - 9	$750	+	$1,125	=	$1,875
9 - 10	$750	+	$1,250	=	$2,000
10 - 11	$750	+	$1,375	=	$2,125
11 - 12	$750	+	$1,500	=	$2,250

Figure: 28 TAC §34.1302(d)

Code	Violation	Penalty
Occupations Code §2154.003	Illegal fireworks e.g. Bottle or Pop Rockets, M-80's	$1,000
Occupations Code §2154.251(2)	Sell <100' from storage and dispensing of flammables (closed until corrected)	$500
Occupations Code §2154.252(c)	Fireworks sold or offered to children under 16 or to an intoxicated or incompetent person	$500
28 TAC §34.809(c)	No permit (stand closed until corrected)	$500
28 TAC §34.809(c)	Original permit not posted	$100
28 TAC §34.817(d)	No 2A Extinguisher per 2000 sqft and within 75 ft travel	$500
28 TAC §34.817(e)	Exit pathway obstructed	$250
28 TAC §34.817(g)	Smoking inside the retail site	$500
28 TAC §34.817(g)	Smoking within 10 ft of retail site	$250
28 TAC §34.817(g)	"NO SMOKING" signs not posted where required (4" letters)	$100
28 TAC §34.817(h)	Site operator consuming or under influence of alcohol (closed until corrected)	$500
28 TAC §34.817(l)	No off highway parking provided	$100
28 TAC §34.817(k)	Selling fireworks from a single or multi-family residential structure	$500
28 TAC §34.817(o)	Fireworks do not conform to USCPS LABELING	$500
28 TAC §34.817(p)	Internal combustion engine operating inside retail site	$500
28 TAC §34.832(1)	Mezzanine or 2nd story accessible to the public	$250
28 TAC §34.832(1)	Selling from a tent, boat, mobile vehicle, multi-use, or multi-tenant building (site closed)	$500
28 TAC §34.832(5), (6)	Inadequate prevention of customers handling fireworks	$100
28 TAC §34.832(8)	Local FD or County FM not notified of location in writing	$100
28 TAC §34.832(9)	Trash or excessive unused boxes in sales area	$50
28 TAC §34.832(10)	Stored behind glass with impinging direct sunlight	$50
28 TAC §34.832(11), (14)	Violations related to extension cords, power strips, outside master shutoff switch	$100
28 TAC §34.832(12)	Retail site not supervised by 18 years of age or older, Sales personel < 16 years of age (closed until corrected)	$500
28 TAC §34.832(13)	Violations related to trash containers type & location	$50
28 TAC §34.832(15), (17)	Space heaters or cooking equipment in sales/storage areas	$100
28 TAC §34.832(19)	Site or features not complying with mercantile occupancy requirements of NFPA 101, Life Safety Code	$1,000

Figure: 28 TAC §34.1302(e)

Code	Violation	Penalty
Occupations Code §2154.003	Illegal fireworks e.g. Bottle or Pop Rockets, M-80's	$1,000
Occupations Code §2154.251(2)	Sell <100' from storage and dispensing of flammables (closed until corrected)	$500
Occupations Code §2154.252(c)	Fireworks sold or offered to children under 16 or to an intoxicated or incompetent person	$500
Occupations Code §2154.254	Sales personnel < 16 years of age	$500
28 TAC §34.809(c)	No permit (stand closed until corrected)	$500
28 TAC §34.809(c)	Original permit not posted	$100
28 TAC §34.817(a)	Stand not supervised, 18 years of age or older (closed until corrected)	$500
28 TAC §34.817(d)	No equipment to extinguish small exterior fires	$50
28 TAC §34.817(e)	Exit pathway obstructed	$50
28 TAC §34.817(g)	Smoking inside the stand	$500
28 TAC §34.817(g)	Smoking within 10 ft of stand	$250
28 TAC §34.817(g)	"NO SMOKING" signs not posted (4" letters)	$50
28 TAC §34.817(h)	Stand operator consuming or under influence of alcohol (closed until corrected)	$500
28 TAC §34.817(l)	No off highway parking provided	$100
28 TAC §34.817(f), (k)	Selling fireworks from a single or multi-family residential structure, tent, or motor vehicle	$500
28 TAC §34.817(j)	No permit for retail stand (1 for ea. non connected stand) (stand closed until corrected)	$100
28 TAC §34.817(m)	Trash, empty cardboard boxes, or high grass within 10 ft of stand	$50
28 TAC §34.817(o)	Fireworks do not conform to USCPS LABELING	$500
28 TAC §34.818.(2)	Violations related to exit doors and proper operation	$100
28 TAC §34.818(5)-(8)	Violations related to electrical inside and outside stand	$100
28 TAC §34.818(9)	Violations related to generator location / no portable extinguisher	$100
28 TAC §34.818(10)	Electric heater does not have a tip over cutoff switch	$50
28 TAC §34.818(10)	Heat or light source with open flames in stand	$100

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Request for Proposals: Fiscal Year 2013 Medicare Rural Hospital Flexibility Program, Rural Emergency Medical Services/Trauma Enhancement Grant

The Texas Department of Agriculture (TDA) is accepting proposals for the Rural Emergency Medical Services/Trauma Enhancement Grant (Grant). The Grant is designed support Critical Access Hospitals (CAHs) in Texas and other eligible applicants including Rural EMS Providers Organizations (Paid or Volunteer), Rural First Responders, and Rural Fire Department-Based EMS (Paid or Volunteer) who are located in a Texas non-metropolitan statistical area (non-MSA), as defined by the Office of Management and Budget (OMB). Proposals must be received by TDA at the close of business (5:00 p.m. CST) on Thursday, March 7, 2013.

Funding Parameters. Contingent upon available funds, eligible CAHs requesting support for costs associated with initial trauma designation may be eligible for reimbursement in an amount not to exceed $5,000 for actual costs. CAHs or other eligible applicants applying for funds for other eligible activities may be eligible for reimbursement in an amount not to exceed $2,500.

Selected proposals will receive funding on a **cost reimbursement** basis. Funds will not be advanced to grantees.

Eligibility. Texas Critical Access Hospitals (CAHs) and other eligible applicants including Rural EMS Providers Organizations (Paid or Volunteer), Rural First Responders, and Rural Fire Department-Based EMS (Paid or Volunteer) who are located in a Texas non-metropolitan statistical area (non-MSA), as defined by the Office of Management and Budget (OMB).

Submitting an Application. Applications are currently being accepted, and must be submitted on the form provided by TDA by the submission deadline. Application and guidance documents are available on TDA's website at: http://www.texasagriculture.gov/GrantsServices/RuralEconomicDevelopment/StateOfficeofRuralHealth/RuralHealthGrants.aspx, or upon request from TDA by calling (512) 463-9905.

Applications must be complete and have all required documentation to be considered. TDA reserves the right to request additional information or documentation to determine eligibility. Applications must be signed by the authorized representative.

Applications may be submitted by email, fax, or mail or hand-delivered to TDA headquarters in Austin, Texas. If mailing the application, make sure it is properly marked.

Deadline for Submission of Responses. A complete application with signature must be received by TDA at the close of business (5:00 p.m. CST) on Thursday, March 7, 2013. *See delivery information below.*

Complete applications with signature must be submitted to:

Mailing Address: Texas Department of Agriculture, State Office of Rural Health, P.O. Box 12847, Austin, Texas 78711.

Or (for overnight delivery):

Street Address: Texas Department of Agriculture, State Office of Rural Health, 1700 N. Congress, 11th Floor, Austin, Texas 78701.

Fax: (888) 216-9867

Email: Grants@TexasAgriculture.gov

Emailed applications must include a scanned Portable Document Format File (PDF) of the completed Form A: Application Page including authorized signature.

Assistance and Questions. For questions regarding submission of the proposal and TDA documentation requirements, please contact Ms. Megan Cody, FLEX Program Coordinator, at (512) 463-9905 or by email at Megan.Cody@TexasAgriculture.gov.

Texas Public Information Act. Once submitted, all applications shall be deemed to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-201300319
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: January 29, 2013

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Office of the Attorney General

Notice of Settlement of a Texas Water Code Enforcement Action

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to §7.110 of the Texas Water Code the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title: *United States of America and State of Texas v. GB Biosciences Corporation, ISK Magnetics, Inc., and Occidental Chemical Corporation,* CA No. 4:13-cv-00151; In the United States District Court for the Southern District of Texas, Houston Division.

Background: This case seeks recovery of damages for injury to natural resources and recovery of costs associated with the future monitoring and restoration under 42 U.S.C. §9607(a)(4)(C) (CERCLA) and Texas Water Code §26.261 et seq., at the Greens Bayou Site, located at 2237 and 2239 Haden Road, Houston, Harris County, Texas. Chemical and industrial operations began at the Greens Bayou Site in the 1950s and continued for over 50 years. The Defendants are owners and/or operators who have engaged in chemical and industrial activities at the Greens Bayou Site. Over the decades of operation, hazardous substances were released at the Greens Bayou Site. Those releases injured habitats and organisms in several ecosystems including benthic sediment, aquatic, and terrestrial, as well as habitats for state and federally protected species including migratory birds and waterfowl.

Nature of the Settlement: The action by the State of Texas against GB Biosciences Corporation, ISK Magnetics, Inc., and Occidental Chemical Corporation will be settled by a Consent Decree in the United States District Court for the Southern District of Texas, Houston Division.

Proposed Settlement: The proposed settlement orders Defendants to pay response costs incurred by the Plaintiffs. The proposed settlement also requires the Defendants to fund the restoration of natural resources damaged by the releases at the Greens Bayou Site.

For a complete description of the proposed settlement, the complete proposed Consent Decree Addressing Natural Resource Damages should be reviewed. Requests for copies of the proposed settlement and written comments on the proposed settlement should be directed to Jane E. Atwood, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201300305
Katherine Cary
General Counsel
Office of the Attorney General
Filed: January 28, 2013

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State Auditor's Office

Request for Proposals

The State Auditor's Office (SAO) invites proposals for auditing services for the purposes of performing the federal portion of the Texas Statewide Single Audit. (Agency Requisition Number 308-00-13-00161)

The Request for Proposals (RFP) documentation may be obtained by contacting Jim Timberlake, Audit Manger, Texas State Auditor's Office, 1501 N. Congress Avenue, Austin, TX 78701, (512) 936-9500, or email jtimberlake@sao.state.tx.us. To view the proposal, please see http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=104188.

RFP submission deadline: March 1, 2013 at 5:00 p.m.

TRD-201300310
Angie Welborn
Senior Legal Counsel
State Auditor's Office
Filed: January 28, 2013

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/04/13 - 02/10/13 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/04/13 - 02/10/13 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201300316
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 28, 2013

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is March 11, 2013. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on March 11, 2013. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: A.P & R LLC and Akhila, Incorporated dba A Mikeys Quik Stop; DOCKET NUMBER: 2012-2227-PST-E; IDENTIFIER: RN101445229; LOCATION: Belton, Bell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,942; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Abdul Saleem and Patty Saleem dba Panther Pit Stop; DOCKET NUMBER: 2012-1674-PST-E; IDENTIFIER: RN101815660; LOCATION: Saint Jo, Montague County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the underground storage tanks (USTs); and 30 TAC §334.10(b) and §334.49(e), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $2,905; ENFORCEMENT COORDINATOR: Steven Van

Landingham, (512) 239-5717; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: Abed Ammouri dba Phillips Mart; DOCKET NUMBER: 2012-1790-PST-E; IDENTIFIER: RN101546877; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $4,873; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Abraham Sayeg dba UNCO Food Store 372; DOCKET NUMBER: 2012-2120-PST-E; IDENTIFIER: RN101879542; LOCATION: Prairie View, Waller County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,438; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: ALYSSA ENTERPRISE, INCORPORATED dba Spencer Food Mart; DOCKET NUMBER: 2012-1853-PST-E; IDENTIFIER: RN102715026; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $4,500; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: ASMARA ENTERPRISES, INCORPORATED dba Rite Track 11; DOCKET NUMBER: 2012-1865-PST-E; IDENTIFIER: RN101864114; LOCATION: Naples, Morris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the product piping associated with the UST system; PENALTY: $6,880; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Austin Equipment Company, LC; DOCKET NUMBER: 2012-1671-AIR-E; IDENTIFIER: RN104085717; LOCATION: Jarrell, Williamson County; TYPE OF FACILITY: rock crushing plant; RULE VIOLATED: 30 TAC §101.5 and §116.115(b)(2)(G) and (c), Texas Health and Safety Code, §382.085(b), and New Source Review Permit Number 70410L001, Special Conditions Numbers 4 and 5.E, by failing to maintain all air pollution emission abatement equipment in good working order and operating properly during normal plant operating hours and by failing to prevent visible fugitive emissions from causing a traffic hazard; PENALTY: $1,113; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(8) COMPANY: Bishnu Shiwakoti dba S & B Store 3; DOCKET NUMBER: 2012-1211-PST-E; IDENTIFIER: RN101557213; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,475; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Cargill Meat Solutions Corporation; DOCKET NUMBER: 2012-1796-AIR-E; IDENTIFIER: RN101634368; LOCATION: Plainview, Hale County; TYPE OF FACILITY: rendering plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O2612, General Terms and Conditions, by failing to timely submit a deviation report; PENALTY: $3,875; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(10) COMPANY: Carlos Fernandez D/B/A Fernandez Auto Salvage; DOCKET NUMBER: 2012-1870-IWD-E; IDENTIFIER: RN105951479; LOCATION: Kingsville, Kleburg County; TYPE OF FACILITY: auto salvage; RULE VIOLATED: 30 TAC §281.25(a)(4), 40 Code of Federal Regulations §122.26, and Texas Pollutant Discharge Elimination System Multi-Sector General Permit Number TXR050000, Part II Section C.3(a)(1), by failing to maintain authorization to discharge storm water associated with industrial activities; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(11) COMPANY: City of Carrizo Springs; DOCKET NUMBER: 2012-0513-MSW-E; IDENTIFIER: RN102335080; LOCATION: Carrizo Springs, Dimmit County; TYPE OF FACILITY: Type I/IV arid-exempt trench and aerial landfill; RULE VIOLATED: 30 TAC §330.165(a) and Municipal Solid Waste (MSW) Permit Number 2225, Site Operating Plan (SOP), IV. 26. Landfill Cover, by failing to provide adequate daily cover; 30 TAC §330.139(1) and MSW Permit Number 2225, SOP, IV. 13. Control of Windblown Solid Waste and Litter, by failing to control windblown waste and litter from the active working face; 30 TAC §330.175 and MSW Permit Number 2225, SOP, IV. 31. Visual Screening of Deposited Waste, by failing to visually screen all deposited waste at the facility; 30 TAC §330.163 and MSW Permit Number 2225, SOP, IV. 25. Compaction, by failing to spread and compact the MSW at the facility with repeated passages of compaction equipment; 30 TAC §330.133(b) and MSW Permit Number 2225, SOP, IV. 10. Unloading of Waste, by failing to prevent the unloading of waste in unauthorized areas at the facility; 30 TAC §330.133(e) and MSW Permit Number 2225, SOP, IV. 7. Detection and Prevention of the Disposal of Prohibited Waste, Hazardous Waste and Polychlorinated Biphenyls, by failing to ensure that the Type IV cell contained only brush and construction or demolition waste and rubbish that are free of putrescible and household waste; 30 TAC §330.167 and MSW Permit Number 2225, SOP, IV. 27. Ponded Water, by failing to prevent the ponding of water at the facility; 30 TAC §330.147(a) and MSW Permit Number 2225, SOP, IV. 17. Disposal of Large Items, by failing to recycle and designate a special area for large, heavy, or bulky items that cannot be incorporated in the regular spreading, compaction, and covering operations at the facility; and 30 TAC §330.151 and MSW Permit Number 2225, SOP, IV. 19. Disease

Vector Control, by failing to control vectors using proper compaction and daily cover procedures, and the use of other approved methods; PENALTY: $20,165; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(12) COMPANY: City of Kenedy; DOCKET NUMBER: 2012-2072-IWD-E; IDENTIFIER: RN101918639; LOCATION: Kenedy, Karnes County; TYPE OF FACILITY: reverse osmosis potable water treatment plant; RULE VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d), and Texas Pollutant Discharge Elimination System Permit Number WQ0003913000, Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent monitoring results at the intervals specified in the permit; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: City of Levelland; DOCKET NUMBER: 2012-2121-MSW-E; IDENTIFIER: RN101572113; LOCATION: Levelland, Hockley County; TYPE OF FACILITY: inactive non-permitted landfill; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste at the site; PENALTY: $1,125; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(14) COMPANY: City of Marlin; DOCKET NUMBER: 2012-2319-PWS-E; IDENTIFIER: RN102886892; LOCATION: Marlin, Falls County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(h)(1)(A), by failing to install backflow prevention assemblies or an air gap at all residences or establishments where an actual or potential contamination hazard exists, as identified in 30 TAC §290.47(i); PENALTY: $804; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: CLYDE VIEW ENTERPRISES LLC dba Anita Food Mart 2; DOCKET NUMBER: 2012-1875-PST-E; IDENTIFIER: RN101808657; LOCATION: Clyde, Callahan County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the UST system; PENALTY: $3,502; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(16) COMPANY: DMAC CONSTRUCTION & DEVELOPMENT, INCORPORATED; DOCKET NUMBER: 2013-0046-WQ-E; IDENTIFIER: RN106543051; LOCATION: Richmond, Fort Bend County; TYPE OF FACILITY: commercial construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Duy Nguyen dba Boydang Automotive; DOCKET NUMBER: 2012-2024-MSW-E; IDENTIFIER: RN106357684; LOCATION: Groves, Jefferson County; TYPE OF FACILITY: automotive body shop; RULE VIOLATED: 30 TAC §324.1 and §324.4(1) and 40 Code of Federal Regulations §279.22(d), by failing to prevent the disposal of used oil on the ground; PENALTY: $262; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: Enbridge Pipelines (Texas Gathering) L.P.; DOCKET NUMBER: 2012-1676-AIR-E; IDENTIFIER: RN104942016; LOCATION: Wheeler County; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §§106.512(2)(C)(ii), 116.620(a)(4), and 122.143(4), Standard Permit Registration Number 83268, Federal Operating Permit (FOP) Number O2877 and General Operating Permit (GOP) Number 514, Site-wide requirements Numbers (b)(2), (b)(7)(D)(xlvi) {now (b)(8)(D)(xli)}, and (c), and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct performance testing within seven days after maintenance is performed; 30 TAC §101.20(1) and §122.143(4), 40 Code of Federal Regulations (CFR) §60.482-7(c)(2) and §60.632(a), FOP Number O2877 and GOP Number 514, Site-wide requirements Numbers (b)(2) and (c), and THSC, §382.085(b), by failing to monthly monitor five valves in a second consecutive month to determine if the repairs stopped the leaks; 30 TAC §101.20(1), 40 CFR §60.482-9(a) and §60.632(a), and THSC, §382.085(b), by failing to repair a leaking component by the end of the process unit shutdown; and 30 TAC §122.143(4) and §122.146(1), FOP Number O2877 and GOP Number 514, Site-wide requirements Number (b)(2) and THSC, §382.085(b), by failing to certify compliance for the June 13, 2010 - June 12, 2011, permit compliance certification period; PENALTY: $11,053; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(19) COMPANY: EXTERRAN ENERGY SOLUTIONS, L.P.; DOCKET NUMBER: 2012-1034-AIR-E; IDENTIFIER: RN102792637; LOCATION: Gail, Borden County; TYPE OF FACILITY: natural gas compression and separation plant; RULE VIOLATED: 30 TAC §116.620(a)(4) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), General Operating Permit (GOP) Number 514/Federal Operating Permit (FOP) Number O2524, Site-wide Requirements Number (b)(8)(B), and Standard Permit Registration Number 47867, by failing to record measurements of nitrogen oxides and carbon monoxide emissions; and 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and GOP Number 514/FOP Number O2524, Site-wide Requirements Number (b)(2), by failing to report all instances of deviations; PENALTY: $5,995; Supplemental Environmental Project offset amount of $2,398 applied to Railroad Commission of Texas - Alternative Fuels Clean School Bus Replacement Program; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 899-8799; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(20) COMPANY: Fabre, Brian; DOCKET NUMBER: 2013-0093-AIR-E; IDENTIFIER: RN101247328; LOCATION: Shallowater, Lubbock County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §111.201, by failing to comply with the requirement that no person may cause, suffer, allow, or permit any outdoor burning within the State of Texas, except as provided by this subchapter or by orders or permits of the commission (repeat only); PENALTY: $875; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(21) COMPANY: G & C Contracting Company, Incorporated; DOCKET NUMBER: 2012-1963-AIR-E; IDENTIFIER: RN101727840; LOCATION: Levelland, Hockley County; TYPE OF FACILITY: painting and sandblasting service company; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety

Code, §382.0518(a) and §382.085(b), by failing to obtain the proper authorization prior to conducting sandblasting and coating operations; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(22) COMPANY: GOODSPRINGS WATER SUPPLY CORPORATION; DOCKET NUMBER: 2012-1928-PWS-E; IDENTIFIER: RN102678695; LOCATION: Henderson, Rusk County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the running annual average; PENALTY: $172; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(23) COMPANY: Gulf West Landfill TX, LP; DOCKET NUMBER: 2012-1713-IHW-E; IDENTIFIER: RN102151099; LOCATION: Anahuac, Chambers County; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §335.2(a), by failing to prevent the disposal of industrial hazardous waste at an unauthorized facility; and 30 TAC §305.125(1) and Industrial Solid Waste Permit Number 39039, Waste Analysis Plan, Section Numbers III.A. and III.B., by failing to comply with all permit conditions; PENALTY: $9,250; Supplemental Environmental Project offset amount of $4,625 applied to Galveston Bay Foundation - Marsh Mania; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Hag Yong Yu dba Y-All Season Food Store; DOCKET NUMBER: 2012-1912-PST-E; IDENTIFIER: RN102886363; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank system for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: $5,000; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Huntsman Petrochemical LLC; DOCKET NUMBER: 2012-1361-AIR-E; IDENTIFIER: RN100219252; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Federal Operating Permit (FOP) Number O1320, Special Terms and Conditions (STC) Number 15, New Source Review (NSR) Permit Number 5972A, Special Conditions (SC) Number 1, and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain an emissions rate below the allowable emissions rate of 14.68 pounds per hour (lbs/hr), as reported in the semi-annual deviation report for the period of February 19, 2011 - August 18, 2011; 30 TAC §116.115(c) and §122.143(4), FOP Number O1320, STC Number 15, NSR Permit Number 36646, SC Number 10, and THSC, §382.085(b), by failing to maintain the volatile organic compound concentration below the allowable limit of 1,204 parts per million from the Wastewater Conveyance System; and 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), FOP Number O1320, STC Number 15, NSR Permit Number 5972A, SC Number 1, and THSC, §382.085(b), by failing to maintain the carbon monoxide emissions rate below the allowable emissions rates of 20.77 lbs/hr from Emission Point Number (EPN) HK-F5-003 and 28.57 lbs/hr from EPN STEAMGEN, as reported in the semi-annual deviation report for the period of October 1, 2011 - March 31, 2012; PENALTY: $53,850; Supplemental Environmental Project offset amount of $21,540 applied to Southeast Texas Regional Planning Commission - West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(26) COMPANY: Iram Rashid; DOCKET NUMBER: 2012-2090-PST-E; IDENTIFIER: RN102356318; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: John D. Nelson; DOCKET NUMBER: 2013-0064-WOC-E; IDENTIFIER: RN103688651; LOCATION: Cameron, Falls County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(28) COMPANY: Kendall Speight, Incorporated dba Hook-N-Bull Oilfield Service; DOCKET NUMBER: 2012-1829-SLG-E; IDENTIFIER: RN105480404; LOCATION: Robstown, Nueces County; TYPE OF FACILITY: sludge transportation service; RULE VIOLATED: 30 TAC §312.142(d), by failing to submit an application to renew an existing TCEQ sludge transporter registration by June 15 of the year in which the registration expired; 30 TAC §312.145(b)(4)(C), by failing to submit a complete annual summary report of the transportation activities for the period of June 1, 2010 - May 31, 2011; 30 TAC §312.142(c) and §312.144(a)(4), by failing to maintain a copy of the registration authorization in each vehicle and by failing to place the commission assigned registration number on both sides of the vehicles or receptacle; 30 TAC §312.142(e)(2), by failing to submit a new registration application when it's been determined that the existing registration does not adequately describe the operations or management methods; and 30 TAC §312.145(a), by failing to maintain the required information on trip tickets; PENALTY: $20,648; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(29) COMPANY: KMCO, LLC; DOCKET NUMBER: 2012-1602-AIR-E; IDENTIFIER: RN101613511; LOCATION: Crosby, Harris County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: Federal Operating Permit Number (FOP) O1441, Special Terms and Conditions (STC) Number 11.A.(i)2., 30 TAC §§117.335(a)(1) and (c), 117.8000(a), 117.9020(2)(C)(i), and 122.143(4), and Texas Health and Safety Code, §382.085(b), by failing to conduct a stack test on the Salt Heater, Emission Point Number (EPN) HA, the Distillation Unit Hot Oil Heater (EPN HJ2), and the Reaction Hot Oil Heater (EPN HH2), by the March 31, 2007 deadline; and FOP Number 01441, STC Number 7, New Source Review Permit Number 9383, 30 TAC §116.115(b)(2)(F) and §122.143(4), and Texas Health and Safety Code, §382.085(b), by failing to comply with permitted carbon monoxide emissions rate of 0.48 pounds per hour; PENALTY: $35,370; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Lehigh Cement Company LLC; DOCKET NUMBER: 2012-1983-AIR-E; IDENTIFIER: RN100218254; LOCATION: Waco, McLennan County; TYPE OF FACILITY: white portland cement manufacturing plant; RULE VIOLATED: 30 TAC §101.201(e)

and §122.143(4), Texas Health and Safety Code, (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O1035, Special Terms and Conditions (STC) Number 2.F, by failing to submit notification of an excess opacity event within 24 hours of discovery; and 30 TAC §111.111(a)(1)(B) and §122.143(4), THSC, §382.085(b), and FOP Number O1035, STC Number 1.A, by failing to comply with the opacity limit of 20% averaged over a six-minute period; PENALTY: $7,613; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (956) 750-1927; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(31) COMPANY: M. USA Enterprises LLC dba Millenium Food Store; DOCKET NUMBER: 2012-1850-PST-E; IDENTIFIER: RN101556694; LOCATION: Denton, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $4,687; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(32) COMPANY: MABIS, INCORPORATED dba Fulton Food & Gas; DOCKET NUMBER: 2012-2177-PST-E; IDENTIFIER: RN105859532; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 36 months; PENALTY: $3,543; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(33) COMPANY: Mack Gaudet dba Twin Oaks Country Store; DOCKET NUMBER: 2012-1896-PST-E; IDENTIFIER: RN105711444; LOCATION: Kilgore, Rusk County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the product piping associated with the UST system; 30 TAC §334.8(c)(4)(A)(vi), by failing to obtain a UST delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days after the date that a regulated substance was placed into the tanks; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $5,309; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(34) COMPANY: Magnificent Investment, Incorporated dba JG Food Mart; DOCKET NUMBER: 2012-1832-PST-E; IDENTIFIER: RN102354974; LOCATION: Seguin, Guadalupe County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of the change or additional information regarding the underground storage tank (UST) system within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form; and 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III), and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to test the line leak detectors for performance and operational reliability at least once per year; PENALTY: $7,632; ENFORCEMENT COORDINATOR: Andrea Park, (713) 422-8970; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(35) COMPANY: Manisha S. Gorkhali dba Hopes New Way; DOCKET NUMBER: 2012-1947-PST-E; IDENTIFIER: RN102350386; LOCATION: Center, Shelby County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $3,900; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(36) COMPANY: Martinek Trucking Corporation; DOCKET NUMBER: 2012-2026-IHW-E; IDENTIFIER: RN106499866; LOCATION: Celina, Denton County; TYPE OF FACILITY: waste transporter business which operates at an unauthorized waste disposal site; RULE VIOLATED: 30 TAC §335.4(1), by failing to prevent the disposal of industrial solid waste in such a manner that would cause the discharge or imminent threat of discharge of industrial solid waste into or adjacent to water of the state; PENALTY: $938; ENFORCEMENT COORDINATOR: Andrea Park, (713) 422-8970; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(37) COMPANY: Mazen, LLC dba Truck N Travel; DOCKET NUMBER: 2012-2054-PST-E; IDENTIFIER: RN101559672; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: truck stop; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the underground storage tanks; PENALTY: $5,759; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(38) COMPANY: MEX-PAK-U.S.A., INCORPORATED dba Shop & Save Food Store; DOCKET NUMBER: 2012-1954-PST-E; IDENTIFIER: RN101790319; LOCATION: Laredo, Webb County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); and 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; PENALTY: $7,125; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(39) COMPANY: Millennium B & O Corporation dba Texaco Loop 12; DOCKET NUMBER: 2011-1791-PST-E; IDENTIFIER: RN102240710; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the underground storage tank system; PENALTY: $3,979; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL

OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(40) COMPANY: MLK FIRST STOP, INCORPORATED dba First Stop Food Store; DOCKET NUMBER: 2012-1938-PST-E; IDENTIFIER: RN102831336; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once a month (not to exceed 35 days between each monitoring); PENALTY: $3,375; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(41) COMPANY: Nakisa Enterprises, LLC dba Mayhill Food Mart; DOCKET NUMBER: 2012-1708-PST-E; IDENTIFIER: RN101542207; LOCATION: Denton, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; PENALTY: $35,800; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(42) COMPANY: NCI Group, Incorporated; DOCKET NUMBER: 2012-1847-AIR-E; IDENTIFIER: RN100213545; LOCATION: Houston, Harris County; TYPE OF FACILITY: metal fabrication plant; RULE VIOLATED: 30 TAC §115.247(2) and §122.143(4), Federal Operating Permit (FOP) Number O1773, Standard Terms and Conditions Number 5.B., and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit the monthly gasoline throughput for 2010 - 2011 to maintain an exempt status; 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O1773, General Terms and Conditions (GTC) and THSC, §382.085(b), by failing to submit a deviation report within 30 days after the end of the reporting period; and 30 TAC §122.143(4) and §122.146(2), FOP Number O1773, GTC and THSC, §382.085(b), by failing to submit the Permit Compliance Certification within 30 days after the end of the certification period; PENALTY: $12,863; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(43) COMPANY: Newman Copeland; DOCKET NUMBER: 2012-2180-WR-E; IDENTIFIER: RN106486749; LOCATION: McGregor, McLennan County; TYPE OF FACILITY: cattle and hay production site; RULE VIOLATED: TWC, §11.121 and 30 TAC §297.11, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(44) COMPANY: NORRIS-BRANTLEY, INCORPORATED dba Skinner's Grocery & Market; DOCKET NUMBER: 2012-2237-PST-E; IDENTIFIER: RN101432730; LOCATION: Longview, Gregg County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the USTs; PENALTY: $3,505; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(45) COMPANY: North East Independent School District; DOCKET NUMBER: 2012-1761-EAQ-E; IDENTIFIER: RN105908008; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.5(f)(2)(A) and Water Abatement Plan (WPAP) 13-10040701A, Standard Conditions Number 12, by failing to notify the appropriate regional office of any sensitive features discovered during construction; and 30 TAC §213.4(k), §213.5(b)(4)(C)(iii) and (iv), and WPAP 13-10040701A, Standard Conditions Number 8, by failing to implement temporary best management practices and water protective measures to prevent pollutants from entering sensitive features and maintain the flow to naturally occurring sensitive features identified in the geologic assessment or construction within the Edwards Aquifer Recharge Zone; PENALTY: $6,713; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(46) COMPANY: NRV Enterprise, Incorporated dba Conoco Phillips 66 Food Mart; DOCKET NUMBER: 2012-2156-PST-E; IDENTIFIER: RN102461837; LOCATION: Spring, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: $2,813; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(47) COMPANY: Pettus Municipal Utility District; DOCKET NUMBER: 2012-2069-MWD-E; IDENTIFIER: RN102079100; LOCATION: Bee County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d) and Texas Pollutant Discharge Elimination System Permit Number WQ0010748001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring reports for the monitoring periods ending January 31, 2012 - April 30, 2012, by the 20th day of the following month; PENALTY: $1,220; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(48) COMPANY: Platinum Packing, Incorporated; DOCKET NUMBER: 2012-1923-AIR-E; IDENTIFIER: RN106181894; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: shrimp processing; RULE VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to take necessary measures to prevent the release of odors which are in such concentration and of such duration as are or may be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(49) COMPANY: RAJESWARY LLP dba C Z Express; DOCKET NUMBER: 2012-2155-PST-E; IDENTIFIER: RN104341128; LOCATION: Shepherd, San Jacinto County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(50) COMPANY: Rankin Road West Municipal Utility District; DOCKET NUMBER: 2012-1878-MWD-E; IDENTIFIER: RN102341070; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0012934001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limits; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(51) COMPANY: RDW Rudy's Frisco Limited Partnership dba Rudy's Country Store and Bar B Q; DOCKET NUMBER: 2012-1677-PST-E; IDENTIFIER: RN105558217; LOCATION: Frisco, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum underground storage tank (UST); 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the UST; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $6,886; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(52) COMPANY: REDDY BUSINESS SOLUTIONS, INCORPORATED dba Oaks Corner; DOCKET NUMBER: 2013-0070-PST-E; IDENTIFIER: RN105348502; LOCATION: Cedar Creek, Bastrop County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(53) COMPANY: Riverstop, Incorporated dba Smart Mart 1; DOCKET NUMBER: 2012-1953-PST-E; IDENTIFIER: RN101833499; LOCATION: Longview, Gregg County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $3,510; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(54) COMPANY: Robert Jarvis dba Forestaire Estates; DOCKET NUMBER: 2012-1996-MWD-E; IDENTIFIER: RN104090998; LOCATION: Crosby, Harris County; TYPE OF FACILITY: mobile home park with an associated wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014500001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations for the monitoring period ending August 31, 2011, September 30, 2011 and June 30, 2012; and 30 TAC §305.125(17) and §319.7(d), and TPDES Permit Number WQ0014500001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring reports by the 20th day of the following month for the monitoring period ending February 29, 2012; PENALTY: $4,875; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(55) COMPANY: S. M. K. INTERNATIONAL, INCORPORATED dba Decent Food Stop; DOCKET NUMBER: 2012-1951-PST-E; IDENTIFIER: RN102359841; LOCATION: Longview, Gregg County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $4,063; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(56) COMPANY: SAZE, INCORPORATED dba New Way Food Store; DOCKET NUMBER: 2012-2083-PST-E; IDENTIFIER: RN102359718; LOCATION: Longview, Gregg County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(57) COMPANY: SHAIKH TRADING, LLC dba Kool Korner Mart; DOCKET NUMBER: 2012-2117-PST-E; IDENTIFIER: RN102275096; LOCATION: Spring, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $1,317; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(58) COMPANY: SHEPHERD BUSINESS, INCORPORATED dba Stop N Drive; DOCKET NUMBER: 2012-1726-PST-E; IDENTIFIER: RN102025178; LOCATION: Shepherd, San Jacinto County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: $7,500; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(59) COMPANY: Shujat Holding Company dba Lone Star Super Market; DOCKET NUMBER: 2012-2195-PST-E; IDENTIFIER: RN101383305; LOCATION: Port Arthur, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(60) COMPANY: Snappy's Exxpress Mart, Incorporated; DOCKET NUMBER: 2012-2336-PST-E; IDENTIFIER: RN101727022; LOCATION: Bridge City, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at

least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,813 ; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(61) COMPANY: SPENCER #1 ENTERPRISES, INCORPORATED dba Amigo Food Mart; DOCKET NUMBER: 2012-1731-PST-E; IDENTIFIER: RN102248481; LOCATION: South Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $2,974; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(62) COMPANY: Stella Link Service Station, Incorporated dba Stella Link Mobil; DOCKET NUMBER: 2012-1984-PST-E; IDENTIFIER: RN101777233; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (956) 750-1927; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(63) COMPANY: Texas A&M University; DOCKET NUMBER: 2012-1897-AIR-E; IDENTIFIER: RN100216274; LOCATION: College Station, Brazos County; TYPE OF FACILITY: university with a utilities plant; RULE VIOLATED: Federal Operating Permit Number O1624, General Terms and Conditions, 30 TAC §122.143(4) and §122.145(2)(A), and Texas Health and Safety Code, §382.085(b), by failing to submit semi-annual deviation reports; PENALTY: $8,250; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(64) COMPANY: Trehan & Raina Enterprises, LLC dba Cypress Point Shell; DOCKET NUMBER: 2013-0069-PST-E; IDENTIFIER: RN101725596; LOCATION: Cypress, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,625; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(65) COMPANY: TRIPLE R BANDERA ENTERPRISES, LTD.; DOCKET NUMBER: 2012-1748-EAQ-E; IDENTIFIER: RN104891239; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: commercial land development site; RULE VIOLATED: 30 TAC §213.4(j)(3) and Water Pollution Abatement Plan (WPAP) Number 13-06021301, Standard Conditions Number 4, by failing to obtain approval of a modification of a WPAP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; 30 TAC §213.5(b)(5)(A) and WPAP Number 13-06021301, Standard Conditions Number 15, by failing to maintain permanent best management practices (BMPs) after construction; 30 TAC §213.5(f)(1) and WPAP Number 13-06021301, Standard Conditions Number 5, by failing to provide written notification of intent to commence construction to the Regional Office no later than 48 hours prior to commencing construction; 30 TAC §213.5(b)(4)(D)(ii)(II) and WPAP Number 13-06021301, Standard Conditions Number 14, by failing to submit to the TCEQ a Texas Licensed Professional Engineer Certification, stating that the permanent BMPs were constructed as designed within 30 days of site completion; and 30 TAC §213.4(g) and WPAP Number 13-06021301, Standard Conditions Number 2, by failing to submit proof of recordation notice in the county deed records within 60 days after approval for the WPAP; PENALTY: $7,275; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(66) COMPANY: Tuscany Heights Partners, LLC; DOCKET NUMBER: 2012-0774-EAQ-E; IDENTIFIER: RN104256227; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: residential development; RULE VIOLATED: 30 TAC §213.5(f)(2) and Edwards Aquifer Water Pollution Abatement Plan (WPAP) Number 13-04042103A, Standard Conditions Number 12, by failing to immediately suspend regulated activities and notify the TCEQ San Antonio Regional Office upon discovery of sensitive features on Lot 12; and 30 TAC §213.5(b)(4)(C)(iii) and WPAP Number 13-04042103A, Standard Conditions Number 2, by failing to implement best management practices and measures to prevent chipped rock from discharging into Sensitive Features Numbers 1 - 4; PENALTY: $9,225; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(67) COMPANY: Valley Municipal Utility District Number 2; DOCKET NUMBER: 2012-2176-MWD-E; IDENTIFIER: RN102093986; LOCATION: Olmito, Cameron County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011348001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, by failing to comply with the permitted effluent limitations; and 30 TAC §305.125(1) and (17), and TPDES Permit Number WQ0011348001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2011; PENALTY: $14,200; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(68) COMPANY: Woodgate Mobile Home Village, Incorporated; DOCKET NUMBER: 2012-1979-MWD-E; IDENTIFIER: RN101263424; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0012414001, Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $3,938; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(69) COMPANY: WRIGHT JOSHUA INVESTMENTS, LLC dba Wright Stop 371; DOCKET NUMBER: 2012-1573-PST-E; IDENTIFIER: RN100534346; LOCATION: Laredo, Webb County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,563; ENFORCEMENT

COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

TRD-201300317
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 29, 2013

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January 2013 Draft Water Quality Management Plan Update

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft January 2013 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) updates.

A copy of the draft January 2013 WQMP update may be found on the commission's Web site located at *http://www.tceq.texas.gov/permitting/wqmp/WQmanagement_updates.html.* A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on March 11, 2013. For further information, or questions, please contact Ms. Vignali at (512) 239-1303 or by email at *Nancy.Vignali@tceq.texas.gov.*

TRD-201300318
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 29, 2013

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Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application No. 40267

APPLICATION. Sharps Environmental Services, Inc., has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration 40267, to construct and operate a Type V municipal solid waste transfer station. The proposed facility, Sharps Environmental Services, Inc., will be located at 1544 NE Loop, Carthage, Texas 75633, in Panola County. The Applicant is requesting authorization to process and transfer municipal solid waste which includes medical waste from medical establishments. The registration application is available for viewing and copying at City Hall, Carthage, Panola County, Texas 75633, and may be viewed online at http://rfc.sageenvironmental.com/sharps.htm. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.17&lng=-94.32&zoom=13&type=r. For exact location, refer to application.

PUBLIC COMMENT/PUBLIC MEETING. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

EXECUTIVE DIRECTOR ACTION. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

INFORMATION. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk mail code MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically submitted to http://www10.tceq.texas.gov/epic/ecmnts/. If you choose to communicate with the TCEQ electronically, please be aware that your e-mail address, like your physical mailing address, will become part of the agency's public record. For information about this application or the registration process, individual members of the general public may call the TCEQ Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Further information may also be obtained from Sharps Environmental Services, Inc., at the address stated above or by calling Mr. Al Aladwani at (903) 693-2525.

TRD-201300349
Bridget Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 30, 2013

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Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Amendment Permit No. 2241B

APPLICATION. Southwaste Disposal, LLC, 9575 Katy Freeway, Suite 130, Houston, Harris County, Texas 77024, a Type V Grease and Grit Trap Liquid Waste Processing Facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment to increase the daily maximum limit of waste acceptance for a Type V processing facility. The facility is located at 6407 Hurst Street, Houston, Harris County, Texas 77008. The TCEQ received the application on December 17, 2012. The permit application is available for viewing and copying at the Heights Neighborhood Library, 1302 Heights Boulevard, Houston, Harris County, Texas 77008, and may be viewed online at http://www.biggsandmathews.com/permits.php. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.7875&lng=-95.428333&zoom=13&type=r. For exact location, refer to application.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION All public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040. Further information may also be obtained from Southwaste Disposal, LLC at the address stated above or by calling Mr. Tim Cox, Vice President of Operations, at (713) 490-7940.

TRD-201300348
Bridget Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 30, 2013

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Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Major Amendment (Proposed) Permit No. 1502A

APPLICATION. Chambers County Landfill, P.O. Drawer TT, Anahuac, Chambers County, Texas 77514-1745, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Type I Municipal Solid Waste (MSW) Major Permit Amendment for authorization for areal and aerial expansion of the Chambers County Landfill. The facility is located at 7501 Highway 65, Anahuac, Chambers County, Texas 77514. The TCEQ received the application on November 19, 2012. The permit application is available for viewing and copying at the Chambers County Library, 202 Cummings Street, Anahuac, Chambers County, Texas 77514. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.8&lng=-94.52&zoom=13&type=r. For exact location, refer to application. The TCEQ Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council (CCC) and has determined that the action is consistent with the applicable CMP goals and policies.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION All public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040. Further information may also be obtained from Chambers County at the address stated above or by calling Mr. Jimmy Kahla, Director of Solid Waste, at (409) 267-2673.

TRD-201300347
Bridget Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 30, 2013

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Notice of Water Quality Applications

The following notices were issued on January 18, 2013, through January 25, 2013.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CITY OF WILLS POINT has applied to the TCEQ for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014834001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located off Goshen Avenue, approximately 3,400 feet east of State Highway 47 and 6,500 feet south of U.S. Highway 80 in Van Zandt County, Texas 75169.

ELLWOOD TEXAS FORGE NAVASOTA LLC which operates Ellwood Texas Forge Navasota, an iron and steel forging facility, has applied for a new permit, proposed TPDES Permit No. WQ0004999000, to authorize the discharge of cooling water blowdown, steel cooling water, boiler blowdown, hydroblast/wash down water, die cooling water, air compressor blowdown, HVAC condensate, magnaflux water, quench water, spent lube fluid, and stormwater runoff not to exceed 500,000 gallons per day dry weather flow via Outfall 001. This facility is located at 10908 County Road 419 adjacent to the west side of the Texas and New Orleans Rail road, with an entrance roadway off State Highway 508, approximately one mile south of the intersection of State Highway 508 and Farm-to-Market Road 379, and approximately three miles south of the City of Navasota, Texas 77868.

CITY OF MARION has applied for a renewal of TPDES Permit No. WQ0010048001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 1,400 feet west of Farm-to-Market Road 465 and 1,800 feet south of Farm-to-Market Road 78 in southwest Marion in Guadalupe County, Texas 78124.

CITY OF MOODY has applied for a renewal of TPDES Permit No. WQ0010225001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located at 501 5th Street, approximately 1,500 feet northwest of the intersection of State Highway 317 and Farm-to-Market Road 107 in Moody in McLennan County, Texas 76557.

CITY OF VALLEY MILLS has applied for a renewal of TPDES Permit No. WQ0010307001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 360,000 gallons per day. The facility is located approximately one mile northeast of the intersection of State Highway 6 and Farm-to-Market Road 56, northeast of the City of Valley Mills in Bosque County, Texas 76689.

CITY OF AUSTIN has applied for a renewal of TPDES Permit No. WQ0010543014, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility will be located approximately three miles east of Farm-to-Market Road 973, approximately one mile north of Farm-to-Market Road 969 and approximately 1.7 miles west of Burleson Road in Travis County, Texas 78653.

CITY OF GALVESTON has applied for a renewal of TPDES Permit No. WQ0010688002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,760,000 gallons per day. The facility is located at 7618 Mustang Drive, Galveston in Galveston County, Texas 77554. The applicant has also applied to the TCEQ for approval of a substantial modification to its pretreatment program under the TPDES program.

GE PACKAGED POWER INC has applied for a renewal of TPDES Permit No. WQ0013365001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located at 16415 Jacintoport Boulevard in Harris County, Texas 77015.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 387 has applied for a renewal of TPDES Permit No. WQ0014347001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located at 25810 1/2 Gosling Road near the City of Spring in Harris County, Texas 77389.

NATIONAL OILWELL VARCO LP has applied for a major amendment to TCEQ Permit No.WQ0014813001, to authorize an increase in the permitted daily and grab sample concentration limitations for Biochemical Oxygen Demand and Total Suspended Solids. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 13,500 gallons per day via non-public access subsurface low pressure dosing drainfields with a minimum area of 178,560 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 11659 U.S. Highway 60, Pampa, Texas, approximately five miles west of the City of Pampa in Gray County, Texas 79065.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201300346
Bridget Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 30, 2013

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on January 24, 2013, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. West Houston Airport Corporation; SOAH Docket No. 582-12-3294; TCEQ Docket No. 2011-0667-MWD-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against West Houston Airport Corporation on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas.

This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201300350
Bridget Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 30, 2013

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: Personal Financial Statement due June 29, 2012

Martin E. Braddy, 310 Briarwood Lane, Sulphur Springs, Texas 75482

Deadline: Lobby Activities Report due November 13, 2012

Richard E. Beck, 167 Dry Creek Road, Austin, Texas 78737

Lindsay Gustafson, 8310 N. Capital of Texas Highway, Suite 490, Austin, Texas 78731

Deadline: Lobby Activities Report due December 10, 2012

Lindsay Gustafson, 8310 N. Capital of Texas Highway, Suite 490, Austin, Texas 78731

TRD-201300238
David A. Reisman
Executive Director
Texas Ethics Commission
Filed: January 24, 2013

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and

policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of November 12, through November 16, 2012. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on January 30, 2013. The public comment period for this project will close at 5:00 p.m. on March 1, 2013.

FEDERAL AGENCY ACTIONS:

Applicant: Source One Capital Group, LLC

Location: The project site is located on a 33.76-acre property located south of East Beach Drive, in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: GALVESTON, Texas. The coordinates are in NAD83. Latitude: 29.31261 degrees North; Longitude: 94.5987 degrees West.

Project Description: The applicant proposes the construction of a 10-lot residential beachfront subdivision, including infrastructure and beach access on Galveston's East Beach. The applicant proposes to discharge approximately 1,113 cubic yards of select fill into approximately 0.469 acre of palustrine emergent dune-swale wetlands.

CMP Project No.: 13-1025

Type of Application: U.S.A.C.E. permit application #SWG-2011-01140 is being evaluated under §404 of the Clean Water Act (CWA).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Andrea Finch, Consistency Review Specialist, P.O. Box 12873, Austin, Texas 78711-2873 or via email at andrea.finch@glo.texas.gov. Comments should be sent to Ms. Finch at the above address or by email.

TRD-201300353
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: January 30, 2013

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Official Notice to Vessel Owner/Operator

This preliminary report and notice of violation is issued by Greg Pollock, Deputy Commissioner, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on 11 January 2013.

PRELIMINARY REPORT

The Texas General Land Office (TGLO) has conducted an investigation and TGLO employees have inspected the following structures listed below:

(1) FACILITY OR STRUCTURE: Production platforms, including all satellite platforms and all machinery, equipment, fixtures, and furnishings appurtenant thereto, known locally as "The Barn." LOCATION: N 29.521789, W 94.913010, in State Tract 288, Galveston Bay, Chambers County, Texas.

(2) FACILITY OR STRUCTURE: Production platforms, including all satellite platforms and all machinery, equipment, fixtures, and furnishings appurtenant thereto, known locally as the "Bird's Nest." LOCATION: N 29.512123, W 94.914165, in State Tract 307, Galveston Bay, Chambers County, Texas.

(3) FACILITY OR STRUCTURE: Production platforms, including all satellite platforms and all machinery, equipment, fixtures, and furnishings appurtenant thereto, known locally as "The Empty Box." LOCATION: N 29.522879, W 94.907051, in State Tract 288, Galveston Bay, Chambers County, Texas.

(4) FACILITY OR STRUCTURE: Production platforms, including all satellite platforms and all machinery, equipment, fixtures, and furnishings appurtenant thereto, known locally as the "Silo." LOCATION: N 29.517672, W 94.917411, in State Tract 288, Galveston Bay, Chambers County, Texas.

Pursuant to §40.254 of the Texas Natural Resources Code (TNRC), the Deputy Commissioner of the Oil Spill Prevention and Response Division, acting under authority of the Commissioner, has determined that the structures identified above are in a wrecked, derelict, or substantially dismantled condition and are a threat to public health, safety, and welfare, a hazard to the environment and a threat to navigation. The suspected owner or operator of the structures cannot be located.

TNRC §40.108(a) prohibits a person from leaving, abandoning, or maintaining a structure or vessel in coastal waters if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition and the Commissioner determines the structure or vessel is a threat to public health, safety, or welfare or a threat to the environment. TNRC §40.108(b) authorizes the Commissioner to remove and dispose of or contract for the removal and disposal of any structure or vessel described in TNRC §40.108(a).

The Deputy Commissioner has determined there is a need to remove these structures from Texas coastal waters and dispose of them in accordance with §40.108. Notices of Violation were sent to the suspected owner, Shoreham Oil and Gas Company, Inc. via certified mail with a return receipt requested, all of which were subsequently unclaimed. Therefore, pursuant to TNRC §40.254, we are now publishing notice on the TGLO website and in this issue of the *Texas Register*.

NOTICE OF VIOLATION

The Commissioner finds that the structures identified above are a threat to public health, safety, and welfare, a hazard to the environment and a threat to navigation because they have been abandoned in Texas coastal waters at a location where operators of public and private vessels may encounter and suffer injury from them and in a condition that constitutes a threat to the environment. The Commissioner recommends that the structures be removed from Texas coastal waters and disposed of in accordance with TNRC §40.108.

The owner or operator of the structures can request a hearing to contest the violation and the removal and disposal of the structures. If the owner or operator wants to request a hearing, a request in writing must be made within twenty (20) days of the posting of this notice. The request for a hearing must be sent to: Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, Texas 78711. Failure to request a hearing may result in the removal and disposal of the structures by the TGLO. If the TGLO removes and disposes of the structures, the TGLO has authority under TNRC §40.108(b) to recover the costs of removal and disposal from the structures' owner or operator.

For additional information, contact Mark Havens at (512) 936-4441.

TRD-201300233
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: January 23, 2013

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for Outpatient Behavioral Health Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 13, 2013, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Outpatient Behavioral Health Services.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for Provisionally Licensed Psychologists (PLPs) are proposed to be effective April 1, 2013. This is an update to the previously posted notice for Provisionally Licensed Psychologists.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services;

§355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners; and

§355.8091, which addresses the reimbursement methodology for licensed professional counselors, licensed master social worker-advanced clinical practitioners, and licensed marriage and family therapists.

The reimbursement rates proposed reflect applicable reductions directed by the 2012-2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session (Article II, Health and Human Services Commission, Section 16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at http://public.tmhp.com/FeeSchedules/Default.aspx.

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after January 29, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201300302
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: January 28, 2013

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit transmittal number 13-002 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The proposed amendment removes outdated language which states that the State has obtained a waiver under 433.139(e) to pay and chase the recovery of Medicaid costs in the Long Term Care Institutional Care and Vendor Drug programs. The language is obsolete because the State no longer has a pay and chase waiver. The State moved to cost avoidance for the Vendor Drug Program in 2009 and will move to cost avoidance in Long Term Care Institutional Care effective February 22, 2013. The cost savings associated with this state plan amendment is related to the move to cost avoidance for Long Term Care Institutional Care. The requested effective date for the proposed amendment is February 22, 2013.

The proposed amendment is estimated to result in an annual aggregate savings of $7,157,846.15 for federal fiscal year (FFY) 2013, consisting of $4,244,602.77 in federal funds and $2,913,243.38 in state general revenue. For FFY 2014, the estimated savings is $12,270,593.40, consisting of $7,201,611.27 in federal funds and $5,068,982.13 in state general revenue. For FFY 2015, the estimated savings is $12,270,593.40, consisting of $7,201,611.27 in federal funds and $5,068,982.13 in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact Brian Dees by mail at HHSC, P.O. Box 13247, Mail Code H600, Austin, Texas 78711 by telephone at (512) 491-1382; by facsimile at (512) 491-1953; or by e-mail at brian.dees@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201300239
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: January 24, 2013

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Sugar Land	TMH Physician Associates, P.L.L.C. dba Methodist Diagnostic Cardiology of Houston	L06527	Sugar Land	00	12/21/12

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Allen	Texas Health Presbyterian Hospital Allen	L05765	Allen	22	01/03/13
Amarillo	The Don and Sybil Harrington Cancer Center	L03053	Amarillo	53	01/02/13
Arlington	Arlington Memorial Hospital dba Texas Health Arlington Memorial Hospital	L02217	Arlington	104	01/14/13
Bay City	Oxea Corporation	L06073	Bay City	03	01/15/13
Baytown	Exxonmobil Refining and Supply Company	L01134	Baytown	68	01/03/13
Baytown	Sarma Challa, M.D., P.A.	L05040	Baytown	16	01/14/13
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	138	01/11/13
Brownsville	VHS Brownsville Hospital Company, L.L.C. dba Valley Baptist Medical Center Brownsville	L06500	Brownsville	01	01/04/13
Carrollton	Alpha Energy Laboratories, Inc.	L02814	Carrollton	18	01/04/13
Conroe	Drilling Specialties Company	L04825	Conroe	17	01/02/13
Conroe	River Pointe Heart and Vascular Center	L05728	Conroe	08	01/08/13
Corpus Christi	Citgo Refining and Chemicals Company, L.P.	L00243	Corpus Christi	51	01/10/13
Corpus Christi	Radiology & Imaging of South Texas, L.L.P. dba Alameda Imaging Center	L05182	Corpus Christi	33	01/04/13
Corpus Christi	Citgo Refining and Chemicals Company, L.P.	L06183	Corpus Christi	03	01/10/13
Dallas	Triad Isotopes, Inc.	L06334	Dallas	03	01/07/13
Denton	Texas Woman's University	L00304	Denton	63	01/07/13
Denton	Texas Health Presbyterian Hospital Denton	L04003	Denton	49	01/08/13
Freeport	Braskem America, Inc.	L06443	Freeport	02	01/15/13
Frisco	Tenet Hospital, Ltd. dba Centennial Medical Center	L05768	Frisco	13	01/04/13
Houston	Houston Refining, L.P.	L00187	Houston	69	01/03/13
Houston	St. Luke's Episcopal Health System Corporation dba St. Luke's Episcopal Health System and Texas Heart Institute	L00581	Houston	97	01/10/13
Houston	New Medical Horizons II., Ltd. dba Cypress Fairbanks Medical Center	L03424	Houston	37	01/11/13
Houston	Woodlands-North Houston Cardiovascular Imaging Center	L04253	Houston	27	01/14/13
Houston	Nuclear Scanning Services, Inc.	L04339	Houston	27	01/11/13
Houston	Rice University	L04639	Houston	15	01/02/13
Houston	American Diagnostic Tech, L.L.C.	L05514	Houston	84	01/07/13
Houston	One Step Diagnostic, Inc.	L05990	Houston	12	01/03/13
Houston	Triad Isotopes, Inc.	L06327	Houston	06	01/02/13
Houston	MH/USON Radiation Management Company, L.L.C.	L06408	Houston	07	01/10/13
Houston	Memorial Hermann Medical Group	L06430	Houston	07	12/21/12
Houston	Memorial Hermann Medical Group	L06430	Houston	08	01/15/13
Lewisville	Columbia Medical Center of Lewisville Subsidiary, L.P. dba Medical Center of Lewisville	L02739	Lewisville	63	01/10/13

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Lubbock	Texas Tech University	L01536	Lubbock	99	01/14/13
Orange	E. I. Dupont De Nemours & Co.	L00005	Orange	73	01/03/13
Orange	Miguel Castellanos, M.D., P.A.	L06184	Orange	03	01/02/13
Paris	Essent PRMC, L.P. dba Paris Regional Medical Center	L03199	Paris	52	01/07/13
Paris	Advanced Heart Care, P.A.	L05290	Paris	36	01/08/13
Pasadena	Celanese, Ltd.	L01130	Pasadena	74	01/04/13
Port Arthur	ARPA Advanced Radiation Physics Associates, L.P.	L06275	Port Arthur	04	01/04/13
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	210	01/07/13
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	311	01/15/13
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	143	01/07/13
San Antonio	Alamo Cement Company, Ltd.	L04951	San Antonio	11	01/04/13
Seguin	Guadalupe Regional Medical Center	L02292	Seguin	44	01/08/13
Sunray	Diamond Shamrock Refining Company, L.P.	L04398	Sunray	20	01/07/13
The Woodlands	Memorial Hermann Hospital System dba Memorial Hermann Hospital The Woodlands	L03772	The Woodlands	101	01/04/13
Throughout TX	Lotus, L.L.C.	L05147	Andrews	24	01/14/13
Throughout TX	Terracon Consultants, Inc.	L05268	Dallas	40	01/14/13
Throughout TX	AMEC Environment & Infrastructure, Inc.	L03622	El Paso	27	01/08/13
Throughout TX	Gray Wireline Service, Inc.	L03541	Fort Worth	43	01/03/13
Throughout TX	Texas QA Services, Inc.	L04601	Grand Prairie	28	01/14/13
Throughout TX	Precision NDT, L.L.C.	L06399	Henderson	04	01/14/13
Throughout TX	Kleinfelder Central Inc.	L01351	Irving	79	01/10/13
Throughout TX	RWLS, L.L.C. dba Renegade Services	L06307	Levelland	12	01/07/13
Throughout TX	Casedhole Solutions, Inc.	L06356	Midland	03	01/03/13
Throughout TX	Eagle X-Ray, Inc.	L03246	Mont Belvieu	105	01/10/13
Throughout TX	Warrior Energy Services Corporation	L06342	Odessa	05	01/14/13
Throughout TX	Effective Environmental, Inc.	L06322	Pasadena	02	01/03/13
Throughout TX	Quantum Technical Services, L.L.C.	L06406	Pasadena	06	01/09/13
Throughout TX	APEX Geoscience, Inc.	L04929	Tyler	41	01/10/13
Throughout TX	Pumpco Energy Services, Inc.	L06507	Valley View	03	01/07/13
Throughout TX	Langerman Foster Engineering Co., L.L.C.	L06382	Waco	02	01/02/13
Vernon	American Electric Power-Public Service Company of Oklahoma	L03481	Vernon	24	01/02/13

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
La Porte	Total Petrochemicals & Refining USA, Inc.	L04640	La Porte	27	01/08/13
Navasota	Glenn Fuqua, Inc.	L04736	Navasota	08	01/07/13
Taylor	Scott and White Hospital - Taylor	L03657	Taylor	32	01/04/13
Throughout TX	Atser Corporation	L04741	Houston	32	01/08/13
Tyler	Delek Refining, Ltd.	L02289	Tyler	24	01/10/13

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Diagnostic Cardiology of Houston	L04888	Houston	15	12/21/12
Houston	CCNWHI, L.P. dba Cy Fair Cancer Center	L06050	Houston	06	01/11/13
Pasadena	Kaneka Texas Corporation	L05050	Pasadena	07	01/07/13
Plano	Mordecai N. Klein, M.D., P.A.	L06237	Plano	03	01/09/13
Throughout TX	Conocophillips Company	L00337	Sweeny	59	01/02/13

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201300320
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: January 29, 2013

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application to change the name of CATALYST RX PLAN SERVICES INSURANCE COMPANY to CATAMARAN INSURANCE OF OHIO, INC., a Foreign Life, Accident and/or Health company. The home office is in Columbus, Ohio.

Application for admission to the State of Texas by UNITED PROPERTY & CASUALTY INSURANCE COMPANY, a foreign Fire and/or Casualty company. The home office is in St. Petersburg, Florida.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201300253
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: January 25, 2013

♦ ♦ ♦

Correction of Error

The Texas Department of Insurance adopted rule amendments to 28 TAC §§1.414, 7.1001, and 25.88 in the January 25, 2013, issue of the *Texas Register* (38 TexReg 372). During the *Texas Register* editing process, several errors were introduced into the preambles of the notices. Those errors and the corrected language follow.

Page 372, right column, first paragraph under "28 TAC §1.414". The word "as" at the beginning of the fifth line should be deleted. The sentence should read as follows:

"The amendments are adopted without changes to the proposed text published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9452)."

Page 373, left column, third complete paragraph, third line. The phrase "(House Bill 1)" should be "(H.B. 1)".

Page 375, right column, second paragraph, end of line 10 through the beginning of line 11. The phrase "2001 - 2006" should be "2001-2006".

Page 375, right column, sixth paragraph, last two lines. The commas after "Chapter 5", "Chapter 1806", "Chapter 2301" and "Title 10" should be deleted.

Page 377, right column, first paragraph, line 12. The comma after "Chapter 407" should be deleted.

Page 378, right column, first paragraph under "28 TAC §7.1001". The word "as" in the sixth line should be deleted. The sentence should read as follows:

"The amendments are adopted without changes to the proposed text published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9459)."

Page 378, right column, last paragraph, third line. The phrase "(House Bill 1)" should be "(H.B. 1)"

Page 381, left column, first paragraph under "28 TAC §25.88". The word "as" at the beginning of the sixth line should be deleted. The sentence should read as follows:

"The amendments are adopted without changes to the proposed text published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9464)."

Page 381, left column, last paragraph, third line. "(House Bill 1)" should be "(H.B. 1)".

Page 382, left column, second to last paragraph, fourth line. The words "Insurance Code" should be deleted.

TRD-201300343

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 1497 "Great Golden 8's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1497 is "GREAT GOLDEN 8'S". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1497 shall be $2.00 per Ticket.

1.2 Definitions in Instant Game No. 1497.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 8 SYMBOL, 09, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, $2.00, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $100, $1,000, and $20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO.1497 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
8 SYMBOL	WIN
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
$2.00	TWO$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$30.00	THIRTY
$50.00	FIFTY
$100	ONE HUND
$1,000	ONE THOU
$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $2.00, $5.00, $6.00, $10.00, $15.00, $16.00, or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $50.00, or $100.

H. High-Tier Prize - A prize of $1,000 or $20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1497), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1497-0000001-001.

K. Pack - A Pack of "GREAT GOLDEN 8'S" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. There will be no breaks between the Tickets in a Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "GREAT GOLDEN 8'S" Instant Game No. 1497 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "GREAT GOLDEN 8'S" Instant Game is determined once the latex on the Ticket is scratched off to expose 19 (nineteen) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that NUMBER. If a player reveals an "8" Play Symbol, the player wins the PRIZE for that symbol instantly. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 19 (nineteen) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut, and have exactly 19 (nineteen) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 19 (nineteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 19 (nineteen) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have identical patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to eight (8) times.

D. On winning and Non-Winning Tickets, the top cash prize of $20,000 and the $1,000 prize will each appear at least once, except on Tickets winning eight (8) times.

E. On winning Tickets, a non-winning prize amount will not match a winning prize amount.

F. On all Tickets, a prize amount will not appear more than two (2) times, except as required by the prize structure to create multiple wins.

G. All YOUR NUMBERS on a Ticket will be different from each other, except as required by the prize structure to create multiple wins.

H. Tickets winning more than one (1) time will use as many WINNING NUMBERS as possible to create matches.

I. On Non-Winning Tickets, a WINNING NUMBER will never match a YOUR NUMBER.

J. All WINNING NUMBERS on a Ticket will be different from each other.

K. YOUR NUMBERS will never equal the corresponding Prize Symbol (i.e., 2 and $2).

L. The "8" symbol will never appear as a WINNING NUMBER.

M. The "8" symbol will never appear on Non-Winning Tickets, and will never appear more than one time on a winning Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "GREAT GOLDEN 8'S" Instant Game prize of $2.00, $5.00, $6.00, $10.00, $15.00, $16.00, $20.00, $30.00, $50.00, or $100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00, or $100 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GREAT GOLDEN 8'S" Instant Game prize of $1,000 or $20,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GREAT GOLDEN 8'S" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "GREAT GOLDEN 8'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "GREAT GOLDEN 8'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose

signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 Tickets in the Instant Game No. 1497. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1497 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	624,000	9.62
$5	304,000	19.74
$6	144,000	41.67
$10	192,000	31.25
$15	16,000	375.00
$16	48,000	125.00
$20	32,000	187.50
$30	4,750	1,263.16
$50	3,248	1,847.58
$100	1,196	5,016.72
$1,000	16	375,000.00
$20,000	8	750,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.38. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1497 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1497, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201300344
Bob Biard
General Counsel
Texas Lottery Commission
Filed: January 30, 2013

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Instant Game Number 1537 "Bonus Cashword"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1537 is "BONUS CASHWORD". The play style is "crossword".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1537 shall be $3.00 per Ticket.

1.2 Definitions in Instant Game No. 1537.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the Ticket. Each Play Symbol is printed in symbol font in black ink in positive. The possible black Play Symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, and blackened square.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol Captions. The

Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1537 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
▓	

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $3.00, $5.00, $10.00, or $20.00.

G. Mid-Tier Prize - A prize of $100 or $500.

H. High-Tier Prize - A prize of $5,000 or $35,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1537), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1537-0000001-001.

K. Pack - A Pack of "BONUS CASHWORD" Instant Game Tickets contain 125 Tickets, which are Packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 125 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other book will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 125 will be shown on the back of the Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BONUS CASHWORD" Instant Game No. 1537 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "BONUS CASHWORD" Instant Game is determined once the latex on the Ticket is scratched off to expose up to 141 (one hundred forty-one) possible Play Symbols. The player must scratch the YOUR LETTERS and BONUS play areas. The player must use the YOUR LETTERS and BONUS LETTERS Play Symbols to form words in the BONUS CASHWORD puzzle. If a player, using YOUR LETTERS and BONUS LETTERS Play Symbols, reveals at least three (3) to ten (10) complete words in the BONUS CASHWORD puzzle, the player wins the corresponding PRIZE in the PRIZE LEGEND. A complete word must contain at least three (3) letters. Letters combined to form a complete "word" must be revealed in an unbroken horizontal (left to right) sequence or vertical (top to bottom) sequence of letters within the BONUS CASHWORD puzzle. Only letters within the BONUS CASHWORD puzzle that are matched with the YOUR LETTERS and BONUS LETTERS Play Symbols can be used to form a complete "word". Words within words are not eligible for a prize. Using the word STONE as an example, all the YOUR LETTERS Play Symbols "S, T, O, N, E" must be revealed for this to count as one complete "word". TON, ONE or any other portion of the sequence of STONE would not count as a complete "word". There will be only one prize per Ticket. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. One hundred forty-one (141) possible Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Play Symbols in this game do not have Play Symbol Captions.

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut, and have 141 (one hundred forty-one) possible Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 141 (one hundred forty-one) possible Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 141 (one hundred forty-one) possible Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket number must be printed in the Pack-Ticket number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have identical patterns of either Play Symbols or Prize Symbols.

B. Each Ticket consists of a YOUR LETTERS area, a BONUS LETTERS area and one BONUS CASHWORD Puzzle Grid.

C. Each word will appear only once per Ticket on the BONUS CASHWORD Puzzle Grid.

D. Each letter will only appear once per Ticket in the YOUR LETTERS play area and BONUS LETTERS play area.

E. Each BONUS CASHWORD Puzzle Grid will contain the following: (a) 4 sets of 3-letter words, (b) 5 sets of 4-letter words, (c) 3 sets of 5-letter words, (d) 3 sets of 6-letter words, (e) 1 set of 7-letter words, (f) 2 sets of 8-letter words and (g) 1 set of 9-letter words.

F. All BONUS CASHWORD Puzzle Grids will have an equal chance of winning a prize.

G. There will be a minimum of three (3) vowels in the YOUR LETTERS and BONUS LETTERS play areas combined.

H. The length of words found in the BONUS CASHWORD Puzzle Grid will range from 3-9 letters.

I. Only words from the approved word list will appear in the BONUS CASHWORD Puzzle Grid.

J. None of the prohibited words will appear horizontally (in either direction), vertically (in either direction) or diagonally (in either direction) in the YOUR LETTERS area (including the BONUS area). In addition, when all rows of the YOUR LETTERS (including the BONUS area) are joined together into a single continuous row of letters (first row, followed by second row, etc.), none of the prohibited words will appear in either the forward or reverse direction.

K. You will never find a word horizontally (in either direction), vertically (in either direction) or diagonally (in either direction) in the YOUR LETTERS play area that matches a word in the BONUS CASHWORD Puzzle Grid.

L. No one (1) letter, with the exception of vowels, will appear more than nine (9) times in the BONUS CASHWORD Puzzle Grid.

M. No Ticket will match eleven (11) words or more.

N. Each Ticket may only win one (1) prize.

O. WINNING TICKETS: Three (3) to ten (10) completed words will be revealed as per the prize structure.

P. NON-WINNING TICKETS: Sixteen (16) to eighteen (18) YOUR LETTERS will open at least one (1) letter in the BONUS CASHWORD Puzzle Grid. At least one of the two BONUS letters will open one or more positions on the BONUS CASHWORD Puzzle Grid.

2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS CASHWORD" Instant Game prize of $3.00, $5.00, $10.00, $20.00, $100, or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a $100 or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BONUS CASHWORD" Instant Game prize of $5,000 or $35,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BONUS CASHWORD" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "BONUS CASHWORD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "BONUS CASHWORD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated therefor, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwith-

standing any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated therefore. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 30,000,000 Tickets in the Instant Game No. 1537. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1537 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$3	3,360,000	8.93
$5	4,320,000	6.94
$10	600,000	50.00
$20	360,000	83.33
$100	61,500	487.80
$500	12,485	2,402.88
$5,000	75	400,000.00
$35,000	50	600,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.44. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1537 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the instant game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1537, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201300345
Bob Biard
General Counsel
Texas Lottery Commission
Filed: January 30, 2013

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North Central Texas Council of Governments

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant request appeared in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8242). The selected consultant will perform technical and professional work for the North Central Texas National Household Travel Survey Review and Analysis.

The consultant selected for this project is Westat Corporation, 1600 Research Boulevard, Rockville, Maryland 20850-3129. The amount of the contract is not to exceed $150,000.

TRD-201300290
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: January 28, 2013

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Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant request appeared in the June 29, 2012, issue of the *Texas Register* (37 TexReg 5029).

The selected consultant will perform technical and professional work for the development of web interface and smart phone applications for real time casual carpooling and lock-in toll rate. The consultant selected for this project is ICF International Inc., 9300 Lee Highway, Fairfax, Virginia 22031-1207. The amount of the contract is not to exceed $175,000.

TRD-201300328

R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: January 29, 2013

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Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

Brazoria County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualification statements for professional aviation engineering design services described below:

Airport Sponsor: Brazoria County. TxDOT CSJ No. 1312ANGLE. Scope: Provide engineering/design services to construct terminal apron, portion of cross Taxiway E and G and install medium intensity lights and signs for Taxiway E and apron at the Texas Gulf Coast Regional Airport.

The **DBE** goal is set at 6 percent. TxDOT Project Manager is Stephanie Kleiber, P.E.

To assist in your qualification preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at

www.txdot.gov/inside-txdot/division/aviation/projects.html by selecting "Texas Gulf Coast Regional Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

www.txdot.gov/inside-txdot/division/aviation/projects.html.

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 format consists of eight eight and one half by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than March 5, 2013, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at

www.txdot.gov/inside-txdot/division/aviation/projects.html.

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, at 1-800-68-PILOT at extension 4517. For technical questions, please contact Stephanie Kleiber at 1-800-68-PILOT at extension 4524.

TRD-201300237
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 24, 2013

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*